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PRIOR PROVISIONS

A prior subtitle IV, consisting of chapters 101 to 119, related to interstate commerce, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

AMENDMENTS

1997—Pub. L. 105-102, §2(5), Nov. 20, 1997, 111 Stat. 2204, struck out “AND TARIFFS” after “RATES” in item for chapter 155.

PART A—RAIL

CHAPTER 101—GENERAL PROVISIONS

Sec.	
10101.	Rail transportation policy.
10102.	Definitions.

§ 10101. Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government—

- (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;
- (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;
- (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
- (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
- (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;
- (6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;
- (7) to reduce regulatory barriers to entry into and exit from the industry;
- (8) to operate transportation facilities and equipment without detriment to the public health and safety;
- (9) to encourage honest and efficient management of railroads;
- (10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;
- (11) to encourage fair wages and safe and suitable working conditions in the railroad industry;
- (12) to prohibit predatory pricing and practices, to avoid undue concentrations of market

power, and to prohibit unlawful discrimination;

(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

(14) to encourage and promote energy conservation; and

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 805.)

PRIOR PROVISIONS

Prior sections 10101 and 10101a were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10101, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1337; Pub. L. 96-296, §4, July 1, 1980, 94 Stat. 793; Pub. L. 96-448, title I, §101(b), Oct. 14, 1980, 94 Stat. 1898; Pub. L. 97-261, §5, Sept. 20, 1982, 96 Stat. 1103; Pub. L. 103-311, title II, §204, Aug. 26, 1994, 108 Stat. 1683, related to transportation policy. See sections 13101 and 15101 of this title.

Section 10101a, added Pub. L. 96-448, title I, §101(a), Oct. 14, 1980, 94 Stat. 1897, related to rail transportation policy.

EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-432, div. A, title VI, §601, Oct. 16, 2008, 122 Stat. 4900, provided that: “This title [enacting sections 10908 to 10910 of this title and amending section 10501 of this title] may be cited as the ‘Clean Railroads Act of 2008.’”

Pub. L. 110-291, §1, July 30, 2008, 122 Stat. 2915, provided that: “This Act [amending sections 13102, 13902, and 13905 of this title and enacting provisions set out as notes under section 13902 of this title] may be cited as the ‘Over-the-Road Bus Transportation Accessibility Act of 2007.’”

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109-59, title IV, §4201, Aug. 10, 2005, 119 Stat. 1751, provided that: “This subtitle [subtitle B (§§ 4201-4216) of title IV of Pub. L. 109-59, enacting sections 14710, 14711, and 14915 of this title, amending sections 13102, 13707, 13902, 14104, 14501, 14706, 14708, and 14901 of this title, and enacting provisions set out as notes under sections 13102, 14701, 14706, and 14710 of this title] may be cited as the ‘Household Goods Mover Oversight Enforcement and Reform Act of 2005[.]’”

Pub. L. 109-59, title IV, §4301, Aug. 10, 2005, 119 Stat. 1761, provided that: “This subtitle [subtitle C (§§ 4301-4308) of title IV of Pub. L. 109-59, enacting sections 14504a and 14506 of this title, amending sections 13902, 13905, 13906, 13908, 31102, and 31103 of this title, repealing section 14504 of this title, and enacting provisions set out as notes under sections 13902 and 14504 of this title] may be cited as the ‘Unified Carrier Registration Act of 2005.’”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-298, §1, Nov. 26, 2002, 116 Stat. 2342, provided that: “This Act [amending sections 13102, 13506, 14501, and 31138 of this title] may be cited as the ‘Real Interstate Driver Equity Act of 2002.’”

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-521, §1, Oct. 22, 1986, 100 Stat. 2993, provided that: “This Act [see Tables for classification] may be

cited as the 'Surface Freight Forwarder Deregulation Act of 1986'."

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-261, §1, Sept. 20, 1982, 96 Stat. 1102, provided: "That this Act [see Tables for classification] may be cited as the 'Bus Regulatory Reform Act of 1982'."

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96-454, §1, Oct. 15, 1980, 94 Stat. 2011, provided: "That this Act [see Tables for classification] may be cited as the 'Household Goods Transportation Act of 1980'."

Pub. L. 96-448, §1, Oct. 14, 1980, 94 Stat. 1895, provided that: "This Act [see Tables for classification] may be cited as the 'Staggers Rail Act of 1980'."

Pub. L. 96-296, §1, July 1, 1980, 94 Stat. 793, provided: "That this Act [see Tables for classification] may be cited as the 'Motor Carrier Act of 1980'."

**§ 10102. Definitions**

In this part—

(1) "Board" means the Surface Transportation Board;

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

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

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

(5) "rail carrier" means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

(6) "railroad" includes—

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

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

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

(7) "rate" means a rate or charge for transportation;

(8) "State" means a State of the United States and the District of Columbia;

(9) "transportation" includes—

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

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

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

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 806.)

PRIOR PROVISIONS

Prior sections 10102 and 10103 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10102, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1338; Pub. L. 96-296, §10(a)(1), July 1, 1980, 94 Stat. 799; Pub. L. 96-454, §3(a), Oct. 15, 1980, 94 Stat. 2011; Pub. L. 97-261, §6(d)(1), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99-521, §4, Oct. 22, 1986, 100 Stat. 2993; Pub. L. 103-272, §5(m)(13), July 5, 1994, 108 Stat. 1377; Pub. L. 103-311, title II, §§205(b), 206(f), Aug. 26, 1994, 108 Stat. 1683, 1686, defined terms used in this subtitle. See sections 10102, 13102, and 15102 of this title.

Section 10103, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1340; Pub. L. 96-448, title II, §214(c)(2), Oct. 14, 1980, 94 Stat. 1915, provided that the remedies under this subtitle were cumulative. See sections 10501, 13103, and 15103 of this title.

A prior chapter 103, consisting of sections 10301 to 10311, 10321, 10322, 10324, 10326 to 10330, 10341 to 10344, 10361 to 10364, and 10381 to 10388, was omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a). See chapter 7 of this title.

Section 10301, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1341; Pub. L. 97-253, title V, §502(b), (e), (h)(1), Sept. 8, 1982, 96 Stat. 806, related to organization, membership, administration, seal, and expenses of Interstate Commerce Commission.

Section 10302, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to divisions of Commission.

Section 10303, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to Secretary and public records of Commission.

Section 10304, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to employee boards of Commission.

Section 10305, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to delegation of authority by Commission.

Section 10306, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1343, related to conduct of Commission proceedings.

Section 10307, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1343, related to offices and sessions of Commission.

Section 10308, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1343, related to admission to practice before Commission.

Section 10309, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1344; Pub. L. 103-437, §18, Nov. 2, 1994, 108 Stat. 4596, related to access to Commission records by congressional committees.

Section 10310, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1344, related to reports of official Commission actions.

Section 10311, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1345, required Commission to submit annual report to Congress.

Section 10321, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1345; Pub. L. 97-261, §24, Sept. 20, 1982, 96 Stat. 1124; Pub. L. 103-272, §4(j)(12), July 5, 1994, 108 Stat. 1368, related to powers of Commission.

Section 10322, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1346; Pub. L. 96-296, §25(a), July 1, 1980, 94 Stat. 816; Pub. L. 96-454, §5(b), Oct. 15, 1980, 94 Stat. 2014; Pub. L. 97-261, §§6(e), 16(c), 17(b), 28(a), Sept. 20, 1982, 96 Stat. 1107, 1117, 1119, 1128; Pub. L. 98-554, title II, §226(c)(1), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 103-272, §5(m)(14), July 5, 1994, 108 Stat. 1377, related to Commission action and appellate procedure in non-rail proceedings.

A prior section 10323, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1346, related to rehearing, reargument, and recon-

sideration in nonrail proceedings, prior to repeal by Pub. L. 96-296, §25(b), July 1, 1980, 94 Stat. 818.

Section 10324, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1347; Pub. L. 96-258, §1(1), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, §25(c), July 1, 1980, 94 Stat. 818, related to taking effect, duration, and modification of Commission actions.

A prior section 10325, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1347, provided for judicial review in nonrail proceedings, prior to repeal by Pub. L. 96-296, §25(d), July 1, 1980, 94 Stat. 818.

Section 10326, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1348, related to limitations in rulemaking proceedings related to rail carriers.

Section 10327, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1348; Pub. L. 96-258, §1(2), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, §25(e), July 1, 1980, 94 Stat. 818; Pub. L. 97-375, title I, §113, Dec. 21, 1982, 96 Stat. 1821; Pub. L. 104-66, title II, §2101, Dec. 21, 1995, 109 Stat. 730, related to Commission action and appellate procedure in rail carrier proceedings.

Section 10328, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1350; Pub. L. 97-261, §28(b), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 99-521, §5(a), Oct. 22, 1986, 100 Stat. 2994, related to intervention in Commission proceedings.

Section 10329, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1351; Pub. L. 99-521, §5(b), Oct. 22, 1986, 100 Stat. 2994, related to service of notice in Commission proceedings.

Section 10330, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1352, related to service of process in court proceedings.

Section 10341, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1352, authorized Commission to refer matters to joint boards.

Section 10342, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1353, related to establishment and membership of joint boards.

Section 10343, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1353, related to powers of joint boards.

Section 10344, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1354; Pub. L. 96-296, §36, July 1, 1980, 94 Stat. 826, related to administration and proceedings of joint boards.

Section 10361, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1355, related to Rail Services Planning Office.

Section 10362, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1355; Pub. L. 98-216, §2(5)-(7), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99-509, title IV, §4033(c)(7), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 103-272, §4(j)(13), July 5, 1994, 108 Stat. 1368, related to duties of Rail Services Planning Office.

Section 10363, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1356; Pub. L. 103-272, §4(j)(14), July 5, 1994, 108 Stat. 1369, related to appointment and duties of Director of Rail Services Planning Office.

Section 10364, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1356; Pub. L. 103-272, §5(m)(15), July 5, 1994, 108 Stat. 1377, related to powers of and assistance to Director.

Section 10381, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1357, related to Office of Rail Public Counsel.

Section 10382, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1357; Pub. L. 96-258, §1(3), June 3, 1980, 94 Stat. 425, related to duties and standing of Office of Rail Public Counsel.

Section 10383, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1357; Pub. L. 103-272, §4(j)(14), July 5, 1994, 108 Stat. 1369, related to duties and appointment of Director of Office of Rail Public Counsel.

Section 10384, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358, related to staff of Office of Rail Public Counsel.

Section 10385, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358; Pub. L. 103-272, §5(m)(15), July 5, 1994, 108 Stat. 1377, related to powers of Office of Rail Public Counsel.

Section 10386, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358, related to reports concerning activities of Office of Rail Public Counsel.

Section 10387, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358, related to budget requests and estimates of Office of Rail Public Counsel.

Section 10388, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358; Pub. L. 96-73, title III, §301, Sept. 29, 1979, 93 Stat. 557, authorized appropriations for Office of Rail Public Counsel for fiscal year ending Sept. 30, 1980.

## CHAPTER 105—JURISDICTION

Sec.	
10501.	General jurisdiction.
10502.	Authority to exempt rail carrier transportation.

### § 10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

(A) only by railroad; or

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

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

(A) a State and a place in the same or another State as part of the interstate rail network;

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

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

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

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

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

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection—

(A) the term “local governmental authority”—

(i) has the same meaning given that term by section 5302 of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term “public transportation” means transportation services described in section 5302 of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over—

(A) public transportation provided by a local government authority; or

(B) a solid waste rail transfer facility as defined in section 10908 of this title, except as

provided under sections 10908 and 10909 of this title.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

- (i) safety;
- (ii) the representation of employees for collective bargaining; and
- (iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 807; amended Pub. L. 104-287, §5(21), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 110-432, div. A, title VI, §602, Oct. 16, 2008, 122 Stat. 4900; Pub. L. 114-94, div. A, title III, §3030(g), Dec. 4, 2015, 129 Stat. 1497.)

#### REFERENCES IN TEXT

The ICC Termination Act of 1995, referred to in subsec. (c)(3)(B), is Pub. L. 104-88, Dec. 29, 1995, 109 Stat. 803. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 101 of this title and Tables.

The Railway Labor Act, referred to in subsec. (c)(3)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (c)(3)(B), is act Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (c)(3)(B), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10501 and 10504 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10501, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1359; Pub. L. 96-448, title II, §214(c)(3)-(5), Oct. 14, 1980, 94 Stat. 1915; Pub. L. 103-272, §4(j)(15), July 5, 1994, 108 Stat. 1369, related to jurisdiction of the Interstate Commerce Commission, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10501 and 15301 of this title.

#### AMENDMENTS

2015—Subsec. (c)(1)(A)(i). Pub. L. 114-94, §3030(g)(1)(A), substituted “section 5302” for “section 5302(a)”.

Subsec. (c)(1)(B). Pub. L. 114-94, §3030(g)(1)(B), substituted “public transportation” for “mass transportation” and “section 5302” for “section 5302(a)”.

Subsec. (c)(2)(A). Pub. L. 114-94, §3030(g)(2), substituted “public transportation” for “mass transportation”.

2008—Subsec. (c)(2). Pub. L. 110-432 amended par. (2) generally. Prior to amendment, text read as follows: “Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.”

1996—Subsec. (c)(3)(B). Pub. L. 104-287 substituted “January 1, 1996” for “the effective date of the ICC Termination Act of 1995”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 1301 of this title.

### § 10502. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part—

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

(2) either—

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

(b) The Board may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Board shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Board decides not to begin a class exemption proceeding, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of an application under this subsection shall be completed within 9 months after it is begun.

(c) The Board may specify the period of time during which an exemption granted under this section is effective.

(d) The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title. The Board shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun.

(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11706 of this title. Nothing in this subsection or section 11706 of this title shall prevent rail carriers from offering alternative terms nor give the Board the authority to require any specific level of rates or services based upon the provisions of section 11706 of this title.

(f) The Board may exercise its authority under this section to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.

(g) The Board may not exercise its authority under this section to relieve a rail carrier of its obligation to protect the interests of employees as required by this part.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 808.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10505 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10502 to 10505, 10521 to 10531, 10541 to 10544, and 10561, were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10502, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1360, related to Interstate Commerce Commission jurisdiction over express carrier transportation.

Section 10503, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1360, related to railroad and water transportation connections and rates. See section 10703 of this title.

Section 10504, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1360; Pub. L. 97-449, §4(b)(4), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 103-272, §4(j)(16), July 5, 1994, 108 Stat. 1369, related to jurisdiction of Commission over mass transportation provided by local governments. See section 10501 of this title.

Section 10505, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1361; Pub. L. 96-448, title II, §213, Oct. 14, 1980, 94 Stat. 1912; Pub. L. 103-311, title II, §205(a), (c)(1), Aug. 26, 1994, 108 Stat. 1683, 1684, related to authority of Commission to exempt rail carrier and motor carrier transportation. See sections 10502 and 13541 of this title.

Section 10521, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1361; Pub. L. 96-296, §31(b), July 1, 1980, 94 Stat. 824; Pub. L. 97-261, §6(f), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99-521, §6(a), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-305, title VI, §601(b)(2)(C), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103-311, title II, §211(b)(1), Aug. 26, 1994, 108 Stat. 1689, related to jurisdiction of Commission over motor carrier transportation. See section 13501 of this title.

Section 10522, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1362, related to exempt transportation between Alaska and other States. See section 13502 of this title.

Section 10523, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1362; Pub. L. 99-521, §6(b), Oct. 22, 1986, 100 Stat. 2994, re-

lated to exempt motor vehicle transportation in terminal areas. See section 13503 of this title.

Section 10524, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1363; Pub. L. 96-296, §9, July 1, 1980, 94 Stat. 798, related to Commission jurisdiction over transportation furthering a primary business. See section 13505 of this title.

Section 10525, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1363; Pub. L. 96-258, §1(4), June 3, 1980, 94 Stat. 425; Pub. L. 97-261, §30, Sept. 20, 1982, 96 Stat. 1123, related to exempt motor carrier transportation entirely in one State. See section 13504 of this title.

Section 10526, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1364; Pub. L. 96-258, §1(5), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, §§7, 21(a), 24(a), July 1, 1980, 94 Stat. 797, 812, 814; Pub. L. 96-454, §11(a), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 97-261, §14(d), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 97-377, §152, Dec. 21, 1982, 96 Stat. 1918; Pub. L. 97-449, §5(g)(1), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 98-216, §2(8), Feb. 14, 1984, 98 Stat. 5; Pub. L. 98-554, title II, §227(c), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103-272, §4(j)(17), July 5, 1994, 108 Stat. 1369, related to miscellaneous motor carrier transportation exemptions. See section 13506 of this title.

Section 10527, added Pub. L. 96-296, §16(a), July 1, 1980, 94 Stat. 810; amended Pub. L. 103-272, §5(m)(16), July 5, 1994, 108 Stat. 1377, related to written contracts pertaining to certain interstate movements by motor vehicle.

Section 10528, added Pub. L. 96-296, §21(b)(1), July 1, 1980, 94 Stat. 812; amended Pub. L. 96-454, §11(b), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 103-272, §5(m)(17), July 5, 1994, 108 Stat. 1377, related to mixed loads of regulated and unregulated property. See section 13507 of this title.

Section 10529, added Pub. L. 96-296, §24(b)(1), July 1, 1980, 94 Stat. 814; amended Pub. L. 103-272, §5(m)(18), July 5, 1994, 108 Stat. 1377, related to authority of Commission over cooperative associations. See section 13508 of this title.

Section 10530, added Pub. L. 98-554, title II, §226(a)(1), Oct. 30, 1984, 98 Stat. 2848; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title IX, §911(a)-(f), Nov. 18, 1988, 102 Stat. 4531-4533; Pub. L. 103-272, §4(j)(18), (o), July 5, 1994, 108 Stat. 1369, 1371, related to certificates of registration for certain foreign carriers. See section 13902 of this title.

Section 10531, added Pub. L. 103-272, §3(1), July 5, 1994, 108 Stat. 1360, related to mass transportation exemption from Commission jurisdiction.

Section 10541, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1365, related to jurisdiction of Commission over transportation by water carriers. See section 13521 of this title.

Section 10542, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1366; Pub. L. 98-89, §3(b), Aug. 26, 1983, 97 Stat. 599; Pub. L. 98-216, §2(9), (10), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(19), July 5, 1994, 108 Stat. 1377, related to exemption of transportation by water carriers of commodities in bulk from Commission jurisdiction.

Section 10543, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1367, related to exemption of certain incidental water transportation from jurisdiction of Commission.

Section 10544, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1368; Pub. L. 96-258, §1(6), June 3, 1980, 94 Stat. 425; Pub. L. 97-449, §5(g)(2), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98-216, §2(11), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(19), July 5, 1994, 108 Stat. 1377, related to exemption of certain miscellaneous water carrier transportation from Commission jurisdiction.

Section 10561, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1369; Pub. L. 99-521, §6(c), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-272, §5(m)(20), July 5, 1994, 108 Stat. 1377, related to jurisdiction of Commission over services of household goods freight forwarders. See section 13531 of this title.

A prior section 10562, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1369; Pub. L. 97-449, §5(g)(3), Jan. 12, 1983, 96 Stat. 2443, related to exempt freight forwarder service, prior to repeal by Pub. L. 99-521, §§6(d)(1), 15, Oct. 22, 1986, 100 Stat. 2994, 2999, effective 60 days after Oct. 22, 1986.

**CHAPTER 107—RATES****SUBCHAPTER I—GENERAL AUTHORITY**

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**SUBCHAPTER I—GENERAL AUTHORITY****§ 10701. Standards for rates, classifications, through routes, rules, and practices**

(a) A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(c) Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

(2) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—

(A) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;

(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(C) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues,

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

(3) The Board shall maintain 1 or more simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 809; amended Pub. L. 104-287, §5(22), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 114-110, §11(a), Dec. 18, 2015, 129 Stat. 2233.)

**PRIOR PROVISIONS**

Prior sections 10701 and 10701a were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10701, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1371; Pub. L. 96-296, §13(a), July 1, 1980, 94 Stat. 803; Pub. L. 96-448, title II, §201(b)(1), (2), Oct. 14, 1980, 94 Stat. 1899, 1900; Pub. L. 97-261, §9(a), Sept. 20, 1982, 96 Stat. 1109; Pub. L. 103-180, §2(a), (b), (g), Dec. 3, 1993, 107 Stat. 2044, 2047, 2049, related to standards for rates, classifications, through routes, rules, and practices. See sections 10701, 13701, 13709, and 15501 of this title.

Section 10701a, added Pub. L. 96-448, title II, §201(a), Oct. 14, 1980, 94 Stat. 1898; amended Pub. L. 103-272, §4(j)(19), July 5, 1994, 108 Stat. 1369, related to standards for rates for rail carriers. See section 10701 of this title.

**AMENDMENTS**

2015—Subsec. (d)(3). Pub. L. 114-110 amended par. (3) generally. Prior to amendment, text read as follows: "The Board shall, within one year after January 1, 1996, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case."

1996—Subsec. (d)(3). Pub. L. 104-287 substituted "January 1, 1996" for "the effective date of this paragraph".

**EFFECTIVE DATE**

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

**ABOLITION OF INTERSTATE COMMERCE COMMISSION**

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 1301 of this title.

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

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable—

(1) rates, to the extent required by section 10707, divisions of joint rates, and classifications for transportation and service it may provide under this part; and

(2) rules and practices on matters related to that transportation or service.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 810.)

PRIOR PROVISIONS

A prior section 10702, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1372; Pub. L. 103-180, §6(a), Dec. 3, 1993, 107 Stat. 2050; Pub. L. 103-311, title II, §206(a), Aug. 26, 1994, 108 Stat. 1684, related to authority for carriers to establish rates, classifications, rules, and practices, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10702 and 15502 of this title.

**§ 10703. Authority for rail carriers to establish through routes**

Rail carriers providing transportation subject to the jurisdiction of the Board under this part shall establish through routes (including physical connections) with each other and with water carriers providing transportation subject to chapter 137, shall establish rates and classifications applicable to those routes, and shall establish rules for their operation and provide—

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

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

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 810.)

PRIOR PROVISIONS

A prior section 10703, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1372; Pub. L. 96-296, §22(a), (h), July 1, 1980, 94 Stat. 812, 814; Pub. L. 97-449, §5(g)(5), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98-216, §2(11), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99-521, §7(a), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-272, §5(m)(21), July 5, 1994, 108 Stat. 1377, related to authority for carriers to establish through routes, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10703 and 13705 of this title.

**§ 10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Board**

(a)(1) When the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

(2) The Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management, for the infrastructure and investment needed to meet the present and future demand for rail services and to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Board shall

make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should—

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

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

(3) On the basis of the standards and procedures described in paragraph (2), the Board shall annually determine which rail carriers are earning adequate revenues.

(b) The Board may begin a proceeding under this section only on complaint. A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Board.

(c) In a proceeding to challenge the reasonableness of a rate, the Board shall make its determination as to the reasonableness of the challenged rate—

(1) within 9 months after the close of the administrative record if the determination is based upon a stand-alone cost presentation; or

(2) within 6 months after the close of the administrative record if the determination is based upon the methodology adopted by the Board pursuant to section 10701(d)(3).

(d)(1) The Board shall maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates. The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and exemption or revocation proceedings, including appropriate sanctions for such delay, and for ensuring prompt disposition of motions and interlocutory administrative appeals.

(2)(A) Except as provided under subparagraph (B), in a stand-alone cost rate challenge, the Board shall comply with the following timeline:

(i) Discovery shall be completed not later than 150 days after the date on which the challenge is initiated.

(ii) The development of the evidentiary record shall be completed not later than 155 days after the date on which discovery is completed under clause (i).

(iii) The closing brief shall be submitted not later than 60 days after the date on which the development of the evidentiary record is completed under clause (ii).

(iv) A final Board decision shall be issued not later than 180 days after the date on which the evidentiary record is completed under clause (ii).

(B) The Board may extend a timeline under subparagraph (A) after a request from any party or in the interest of due process.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 810; amended Pub. L. 104-287, §5(23), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 114-110, §§11(b), 16, Dec. 18, 2015, 129 Stat. 2233, 2238.)

## PRIOR PROVISIONS

A prior section 10704, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1373; Pub. L. 96-296, §13(b), July 1, 1980, 94 Stat. 803; Pub. L. 96-448, title II, §205(b), Oct. 14, 1980, 94 Stat. 1906; Pub. L. 97-261, §9(b), Sept. 20, 1982, 96 Stat. 1109; Pub. L. 99-521, §7(b), Oct. 22, 1986, 100 Stat. 2994, related to authority and criteria for rates, classifications, rules, and practices prescribed by Interstate Commerce Commission, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10704, 13701, and 15503 of this title.

## AMENDMENTS

2015—Subsec. (a)(2). Pub. L. 114-110, §16, inserted “for the infrastructure and investment needed to meet the present and future demand for rail services and” after “management,” in introductory provisions.

Subsec. (d). Pub. L. 114-110, §11(b), designated existing provisions as par. (1), substituted “The Board shall maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates.” for “Within 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.”, and added par. (2).

1996—Subsec. (d). Pub. L. 104-287 substituted “January 1, 1996” for “the effective date of the ICC Termination Act of 1995”.

**§ 10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Board**

(a)(1) The Board may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates, the division of joint rates, and the conditions under which those routes must be operated, for a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

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

(A) required under section 10741, 10742, or 11102 of this title;

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

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

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

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

(c) If a division of a joint rate prescribed under a decision of the Board is later found to violate section 10701 of this title, the Board may decide

what division would have been reasonable and order adjustment to be made retroactive to the date the complaint was filed, the date the order for an investigation was made, or a later date that the Board decides is justified. The Board may make a decision under this subsection effective as part of its original decision.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 811.)

## PRIOR PROVISIONS

Prior sections 10705 and 10705a were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10705, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1375; Pub. L. 96-296, §22(b)-(g), July 1, 1980, 94 Stat. 813; Pub. L. 96-448, title II, §218, Oct. 14, 1980, 94 Stat. 1925; Pub. L. 97-449, §5(g)(4), Jan. 12, 1983, 96 Stat. 2443, related to authority for through routes, joint classifications, rates, and divisions prescribed by Interstate Commerce Commission. See sections 10705 and 13701 of this title.

Section 10705a, added Pub. L. 96-448, title II, §217(a)(1), Oct. 14, 1980, 94 Stat. 1916; amended Pub. L. 103-272, §4(j)(20), July 5, 1994, 108 Stat. 1369, related to joint rate surcharges and cancellations.

**§ 10706. Rate agreements: exemption from anti-trust laws**

(a)(1) In this subsection—

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

(B) the term “single-line rate” refers to a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier; and

(C) the term “practicably participates in the movement” shall have such meaning as the Board shall by regulation prescribe.

(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Board under this part that is a party to an agreement of at least 2 rail carriers that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of them, shall apply to the Board for approval of that agreement under this subsection. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Board approves the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) do not

apply to parties and other persons with respect to making or carrying out the agreement. However, the Board may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

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

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

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

- (i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, except that for purposes of general rate increases and broad changes in rates, classifications, rules, and practices only, if the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;
- (ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in the movement; or
- (iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. If the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.

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

(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, proof of an agreement, conspiracy, or combination may not be inferred from evidence that two or more rail carriers acted together with respect to an interline rate or related matter and that a party to such action took similar action with respect to a rate or related matter on another route or

traffic. In any proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement—

(I) was in accordance with an agreement approved under paragraph (2) of this subsection; or

(II) concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in the first sentence of this clause.

In any proceeding before a jury, the court shall determine whether the requirements of subsection (I) or (II) are satisfied before allowing the introduction of any such evidence.

(C) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcripts or recordings and voting records be submitted to the Board and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5, United States Code.

(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Board approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Board may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves that relates to the amount of compensation such shippers propose to be paid by rail carriers providing transportation subject to the jurisdiction of the Board under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Board for approval of that agreement under this paragraph. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Board approves the agreement, it may be made and carried out under its terms and under the

terms required by the Board, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement. The Board shall approve or disapprove an agreement under this paragraph within one year after the date application for approval of such agreement is made.

(B) If the Board approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance, are unable to agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Board. The Board shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Board.

(C) Nothing in this paragraph shall be construed to change the law in effect prior to October 1, 1980, with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers.

(b) The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board may inspect a record maintained under this section.

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

(d) The Board may begin a proceeding under this section on its own initiative or on application. Action of the Board under this section—

- (1) approving an agreement;
- (2) denying, ending, or changing approval;
- (3) prescribing the conditions on which approval is granted; or
- (4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a) of this section.

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

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

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

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

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 812; amended Pub. L. 104-287, §5(24), Oct. 11, 1996, 110 Stat. 3390.)

#### REFERENCES IN TEXT

The Sherman Act, referred to in subsec. (a)(2)(A), (4), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in subsec. (a)(2)(A), (4), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15 and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(2)(A), (4), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Wilson Tariff Act, referred to in subsec. (a)(2)(A), (4), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, which enacted sections 8 and 9, respectively, of Title 15.

Act of June 19, 1936, referred to in subsec. (a)(2)(A), (4), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Anti-discrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15 and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

#### PRIOR PROVISIONS

A prior section 10706, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1377; Pub. L. 96-258, §1(7), June 3, 1980, 94 Stat. 426; Pub. L. 96-296, §14(a), (c), (d), July 1, 1980, 94 Stat. 803, 808; Pub. L. 96-448, title II, §219(a)-(e), 224(b), Oct. 14, 1980, 94 Stat. 1926-1929; Pub. L. 97-261, §10(a)-(d), Sept. 20, 1982, 96 Stat. 1109, 1110; Pub. L. 98-216, §2(12), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99-521, §7(c), Oct. 22, 1986, 100 Stat. 2995, related to exemption from antitrust laws of rate agreements, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10706 and 13703 of this title.

#### AMENDMENTS

1996—Subsec. (a)(5)(C). Pub. L. 104-287 substituted “October 1, 1980,” for “the effective date of the Staggers Rail Act of 1980”.

#### § 10707. Determination of market dominance in rail rate proceedings

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

(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Board under this part is challenged as being unreasonably high, the Board shall determine whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies. The Board may make that determination on its own initiative or on complaint. A finding by the Board that the rail carrier does not have market

dominance is determinative in a proceeding under this part related to that rate or transportation unless changed or set aside by the Board or set aside by a court of competent jurisdiction.

(c) When the Board finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum.

(d)(1)(A) In making a determination under this section, the Board shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent.

(B) For purposes of this section, variable costs for a rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Uniform Rail Costing System cost finding methodology (or an alternative methodology adopted by the Board in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates, with adjustments specified by the Board. A rail carrier may meet its burden of proof under this subsection by establishing its variable costs in accordance with this paragraph, but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the Board shall prescribe.

(2) A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that—

(A) such rail carrier has or does not have market dominance over such transportation; or

(B) the proposed rate exceeds or does not exceed a reasonable maximum.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 815.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10709 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10707 and 10707a were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10707, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1380; Pub. L. 96-448, title II, §207, Oct. 14, 1980, 94 Stat. 1907; Pub. L. 103-272, §4(j)(21), July 5, 1994, 108 Stat. 1369, related to investigation and suspension of new rail carrier rates, classifications, rules, and practices.

Section 10707a, added Pub. L. 96-448, title II, §203(a), Oct. 14, 1980, 94 Stat. 1901; amended Pub. L. 103-272, §4(j)(22), July 5, 1994, 108 Stat. 1369, related to zone of rail carrier flexibility.

#### § 10708. Rail cost adjustment factor

(a) The Board shall, as often as practicable, but in no event less often than quarterly, pub-

lish a rail cost adjustment factor which shall be a fraction, the numerator of which is the latest published Index of Railroad Costs (which index shall be compiled or verified by the Board, with appropriate adjustments to reflect the change in composition of railroad costs, including the quality and mix of material and labor) and the denominator of which is the same index for the fourth quarter of every fifth year, beginning with the fourth quarter of 1992.

(b) The rail cost adjustment factor published by the Board under subsection (a) of this section shall take into account changes in railroad productivity. The Board shall also publish a similar index that does not take into account changes in railroad productivity.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 816.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10712 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10708, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1382; Pub. L. 96-296, §11, July 1, 1980, 94 Stat. 801; Pub. L. 97-261, §§11, 12(a), Sept. 20, 1982, 96 Stat. 1112, 1113; Pub. L. 99-521, §7(d), Oct. 22, 1986, 100 Stat. 2995, related to investigation and suspension of new nonrail carrier rates, classifications, rules, and practices, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 10709. Contracts

(a) One or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

(b) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

(c)(1) A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.

(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree. This section does not confer original jurisdiction on the district courts of the United States based on section 1331 or 1337 of title 28, United States Code.

(d)(1) A summary of each contract for the transportation of agricultural products (including grain, as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof) entered into under this section shall be filed with the Board, containing such nonconfidential information as the Board prescribes. The Board shall publish special rules for such contracts in order to ensure that the essential terms of the contract are available to the general public.

(2) Documents, papers, and records (and any copies thereof) relating to a contract described

in subsection (a) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

(e) Any lawful contract between a rail carrier and one or more purchasers of rail service that was in effect on October 1, 1980, shall be considered a contract authorized by this section.

(f) A rail carrier that enters into a contract as authorized by this section remains subject to the common carrier obligation set forth in section 11101, with respect to rail transportation not provided under such a contract.

(g)(1) No later than 30 days after the date of filing of a summary of a contract under this section, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

(2)(A) A complaint may be filed under this subsection—

(i) by a shipper on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

(B) In addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper of agricultural commodities on the grounds that such shipper individually will be harmed because—

(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) the proposed contract constitutes a destructive competitive practice under this part.

In making a determination under clause (ii) of this subparagraph, the Board shall consider the difference between contract rates and published single car rates.

(C) For purposes of this paragraph, the term “unreasonable discrimination” has the same meaning as such term has under section 10741 of this title.

(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Board may establish, the Board shall determine whether the contract that is the subject of such proceeding is in violation of this section.

(B) If the Board determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a rail carrier, the Board shall, subject to the provisions of this section, order such rail carrier to provide rates and service substantially similar to the contract at issue

with such differentials in terms and conditions as are justified by the evidence.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 817; amended Pub. L. 104-287, §5(24), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 114-110, §11(d), Dec. 18, 2015, 129 Stat. 2234.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10713 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10709 to 10713 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10709, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1382; Pub. L. 96-448, title II, §202, Oct. 14, 1980, 94 Stat. 1900, related to determination of market dominance in rail carrier rate proceedings. See section 10707 of this title.

Section 10710, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1383, related to elimination of discrimination against recyclable materials.

Section 10711, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1383, related to effect of former sections 10701(a), (b), 10707, 10709, 10727, and 10728 of this title on rail rates and practices.

Section 10712, added Pub. L. 96-448, title II, §206(a), Oct. 14, 1980, 94 Stat. 1906, related to inflation-based rate increases.

Section 10713, added Pub. L. 96-448, title II, §208(a), Oct. 14, 1980, 94 Stat. 1908; amended Pub. L. 97-468, title V, §502, Jan. 14, 1983, 96 Stat. 2552; Pub. L. 99-509, title IV, §4051, Oct. 21, 1986, 100 Stat. 1910, related to contracts between rail carriers and purchasers of rail services. See section 10709 of this title.

#### AMENDMENTS

2015—Subsec. (h). Pub. L. 114-110 struck out subsec. (h) which related to certain contracts for the transportation of agricultural commodities.

1996—Subsec. (e). Pub. L. 104-287 substituted “October 1, 1980,” for “the effective date of the Staggers Rail Act of 1980”.

### SUBCHAPTER II—SPECIAL CIRCUMSTANCES

#### § 10721. Government traffic

A rail carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 6101(b) to (d) of title 41 does not apply when transportation for the United States Government can be obtained from a rail carrier lawfully operating in the area where the transportation would be provided.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819; amended Pub. L. 111-350, §5(o)(4), Jan. 4, 2011, 124 Stat. 3853.)

#### PRIOR PROVISIONS

A prior section 10721, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1383; Pub. L. 96-454, §10(b), Oct. 15, 1980, 94 Stat. 2022; Pub. L. 103-272, §5(m)(22), July 5, 1994, 108 Stat. 1378, related to Government traffic, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10721, 13712, and 15504 of this title.

#### AMENDMENTS

2011—Pub. L. 111-350 substituted “Section 6101(b) to (d) of title 41” for “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

#### § 10722. Car utilization

In order to encourage more efficient use of freight cars, notwithstanding any other provi-

sion of this part, rail carriers shall be permitted to establish premium charges for special services or special levels of services not otherwise applicable to the movement. The Board shall facilitate development of such charges so as to increase the utilization of equipment.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10734 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10722 to 10726 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10722, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1384; Pub. L. 97-261, §29(a), (b), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 99-521, §7(e), Oct. 22, 1986, 100 Stat. 2995, related to special passenger rates.

Section 10723, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1385; Pub. L. 97-261, §29(c), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 102-54, §13(s), June 13, 1991, 105 Stat. 282; Pub. L. 102-240, title IV, §4011, Dec. 18, 1991, 105 Stat. 2156, related to transportation for charitable purposes.

Section 10724, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1386, related to rates for emergency transportation.

Section 10725, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1387; Pub. L. 99-521, §7(f), Oct. 22, 1986, 100 Stat. 2995, related to special freight forwarder rates.

Section 10726, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1387; Pub. L. 96-448, title II, §220, Oct. 14, 1980, 94 Stat. 1928, related to long and short haul transportation.

A prior section 10727, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1388, authorized the Interstate Commerce Commission to maintain standards and procedures to permit seasonal, regional, or peak-period demand rates and required the Commission to submit an annual report to Congress on implementation of those rates and recommendations for additional legislation needed to make it easier to establish those rates, prior to repeal by Pub. L. 96-448, title II, §209, title VII, §710(a), Oct. 14, 1980, 94 Stat. 1910, 1966, effective Oct. 1, 1980.

A prior section 10728, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1388, related to separate rates for distinct rail services, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10729, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1389, authorized rail carrier to establish rate, classification, rule, or practice requiring total capital investment of at least \$1,000,000 to implement upon notice to Interstate Commerce Commission and opportunity for Commission proceeding and final decision within 180 days after notice and provided that Commission could not suspend or set aside any rate that became final for period of five years but could revise rate to level equal to variable costs of providing transportation when Commission found level then in effect reduced going concern of carrier, prior to repeal by Pub. L. 96-448, title II, §210(a), title VII, §710(a), Oct. 14, 1980, 94 Stat. 1910, 1966, effective Oct. 1, 1980.

Prior sections 10730 to 10735 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10730, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1389; Pub. L. 96-296, §12, July 1, 1980, 94 Stat. 802; Pub. L. 96-448, title II, §211(a), (b), Oct. 14, 1980, 94 Stat. 1911; Pub. L. 99-521, §7(g), Oct. 22, 1986, 100 Stat. 2995, related to rates and liability based on value.

Section 10731, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1389; Pub. L. 96-448, title II, §204, Oct. 14, 1980, 94 Stat. 1905; Pub. L. 103-272, §4(j)(23), July 5, 1994, 108 Stat. 1369, related to investigation of discriminatory rail rates for transportation of recyclable or recycled materials.

Section 10732, added Pub. L. 96-296, §8(a), July 1, 1980, 94 Stat. 798; amended Pub. L. 100-690, title IX, §9113, Nov. 18, 1988, 102 Stat. 4535, related to food and grocery transportation. See section 13713 of this title.

Section 10733, added Pub. L. 96-296, §32(a), July 1, 1980, 94 Stat. 824, related to rates for transportation of recyclable materials.

Section 10734, added Pub. L. 96-448, title II, §225(a), Oct. 14, 1980, 94 Stat. 1930, related to car utilization. See section 10722 of this title.

Another prior section 10734 was renumbered section 10735 of this title.

Section 10735, added Pub. L. 96-454, §4(a), Oct. 15, 1980, 94 Stat. 2012, §10734; renumbered §10735, Pub. L. 98-554, title II, §227(b)(1), Oct. 30, 1984, 98 Stat. 2852; amended Pub. L. 103-272, §5(m)(23), July 5, 1994, 108 Stat. 1378, related to household goods rates, estimates, and guarantees of service. See section 13704 of this title.

#### SUBCHAPTER III—LIMITATIONS

### § 10741. Prohibitions against discrimination by rail carriers

(a)(1) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

(2) For purposes of this section, a rail carrier engages in unreasonable discrimination when it charges or receives from a person a different compensation for a service rendered, or to be rendered, in transportation the rail carrier may perform under this part than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances.

(b) This section shall not apply to—

(1) contracts described in section 10709 of this title;

(2) rail rates applicable to different routes; or

(3) discrimination against the traffic of another carrier providing transportation by any mode.

(c) Differences between rates, classifications, rules, and practices of rail carriers do not constitute a violation of this section if such differences result from different services provided by rail carriers.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819.)

#### PRIOR PROVISIONS

A prior section 10741, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1390; Pub. L. 96-296, §33(d), July 1, 1980, 94 Stat. 825; Pub. L. 96-448, title II, §212, Oct. 14, 1980, 94 Stat. 1912; Pub. L. 99-521, §7(h), Oct. 22, 1986, 100 Stat. 2995, related to prohibitions against discrimination by common carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10741 and 15505 of this title.

### § 10742. Facilities for interchange of traffic

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819.)

## PRIOR PROVISIONS

A prior section 10742, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1391, related to facilities for interchange of traffic, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10742 and 15506 of this title.

**§ 10743. Liability for payment of rates**

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

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

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

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the rail carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the rail carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

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

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

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

that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under paragraph (2) of this subsection on delivery. However, if the party gives written notice to the delivering rail carrier before delivery that the party is not the beneficial owner of the prop-

erty and gives the rail carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering rail carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.

(c)(1) A rail carrier may bring an action to enforce liability under subsection (a) of this section. That rail carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the consignee, or the beneficial owner named by the consignee or agent, under that section.

(2) A rail carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10744 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10743, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1391; Pub. L. 99-521, §7(i), Oct. 22, 1986, 100 Stat. 2995, related to payment of rates, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 13707 of this title.

**§ 10744. Continuous carriage of freight**

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not enter a combination or arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination whether by change of time schedule, carriage in different cars, or by other means. The carriage of freight by those rail carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage, or interruption is not made in good faith for a necessary purpose, and with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this part.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10745 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10744, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1391, related to liability for payment of rates, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10743 and 13706 of this title.

**§ 10745. Transportation services or facilities furnished by shipper**

A rail carrier providing transportation or service subject to the jurisdiction of the Board

under this part may establish a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Board may prescribe the maximum reasonable charge or allowance a rail carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section. The Board may begin a proceeding under this section on its own initiative or on application.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10747 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10745, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1392, related to continuous carriage of freight, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 10744 of this title.

#### § 10746. Demurrage charges

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to—

- (1) freight car use and distribution; and
- (2) maintenance of an adequate supply of freight cars to be available for transportation of property.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10750 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10746, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1393, related to transportation of commodities manufactured or produced by rail carrier, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 10747. Designation of certain routes by shippers

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

- (A) there are at least 2 through routes over which the property could be transported;
- (B) a through rate has been established for transportation over each of those through routes; and
- (C) the rail carrier is a party to those routes and rates.

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

rail carrier, that rail carrier must also receive and transport it according to the routing instructions and deliver it to the next succeeding rail carrier or consignee according to the instructions.

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

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10763 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10747 to 10751, 10761 to 10767, and 10781 to 10786 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10747, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1393, related to transportation services or facilities furnished by shippers. See section 10745 of this title.

Section 10748, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1393, related to transportation of livestock by rail carrier.

Section 10749, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1393; Pub. L. 96-296, §10(c), July 1, 1980, 94 Stat. 800; Pub. L. 97-468, title VI, §615(b)(3), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98-216, §2(13), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99-521, §7(j)(1), (2), Oct. 22, 1986, 100 Stat. 2995; Pub. L. 103-272, §4(j)(24), July 5, 1994, 108 Stat. 1369, related to exchange of services and limitation on use of common carriers by household goods freight forwarders.

Section 10750, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1394, related to demurrage charges. See section 10746 of this title.

Section 10751, added Pub. L. 96-296, §33(a), July 1, 1980, 94 Stat. 824; amended Pub. L. 96-448, title II, §215(a), Oct. 14, 1980, 94 Stat. 1915; Pub. L. 103-272, §4(j)(25), July 5, 1994, 108 Stat. 1369, related to business entertainment expenses. See section 14901 of this title.

Section 10761, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1394; Pub. L. 96-296, §33(c), July 1, 1980, 94 Stat. 825; Pub. L. 103-311, title II, §206(b), Aug. 26, 1994, 108 Stat. 1684, related to prohibition of transportation without tariff. See section 13702 of this title.

Section 10762, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1394; Pub. L. 96-296, §5(c), July 1, 1980, 94 Stat. 796; Pub. L. 96-448, title II, §216, Oct. 14, 1980, 94 Stat. 1915; Pub. L. 97-261, §12(b), Sept. 20, 1982, 96 Stat. 1113; Pub. L. 99-521, §7(k), Oct. 22, 1986, 100 Stat. 2995; Pub. L. 103-180, §5, Dec. 3, 1993, 107 Stat. 2050; Pub. L. 103-311, title II, §206(c)-(e), Aug. 26, 1994, 108 Stat. 1684, 1685, related to general tariff requirements. See sections 13702 and 13710 of this title.

Section 10763, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1396, related to designation of certain routes by shippers or Interstate Commerce Commission. See section 10747 of this title.

Section 10764, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1397, related to arrangements between carriers and required copies of arrangements to be filed with Commission.

Section 10765, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1397, related to water transportation under arrangements with certain other carriers.

Section 10766, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1398; Pub. L. 96-296, §10(d), July 1, 1980, 94 Stat. 801; Pub. L. 99-521, §7(l), Oct. 22, 1986, 100 Stat. 2995, related to freight forwarder traffic agreements.

Section 10767, added Pub. L. 103-180, §7(a), Dec. 3, 1993, 107 Stat. 2051, related to billing and collecting practices. See section 13708 of this title.

Section 10781, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1398, related to investigations and reports by Commission on value of carrier property.

Section 10782, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1399, related to requirements for establishing value.

Section 10783, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1400, related to cooperation and assistance of carriers.

Section 10784, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1400; Pub. L. 96-258, §1(8), June 3, 1980, 94 Stat. 426, related to revision of property valuations.

Section 10785, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1401, related to finality of valuations, notices, protests, and review.

Section 10786, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1401, related to applicability of sections 10781 to 10786 of this title.

### CHAPTER 109—LICENSING

Sec.	
10901.	Authorizing construction and operation of railroad lines.
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#### AMENDMENTS

2008—Pub. L. 110-432, div. A, title VI, §§603(b), 604(b), 605(b), Oct. 16, 2008, 122 Stat. 4903, 4905, added items 10908 to 10910.

#### § 10901. Authorizing construction and operation of railroad lines

(a) A person may—

- (1) construct an extension to any of its railroad lines;
- (2) construct an additional railroad line;
- (3) provide transportation over, or by means of, an extended or additional railroad line; or
- (4) in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line,

only if the Board issues a certificate authorizing such activity under subsection (c).

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice, including notice to the Governor of any affected State, of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest.

(d)(1) When a certificate has been issued by the Board under this section authorizing the construction or extension of a railroad line, no other rail carrier may block any construction or extension authorized by such certificate by refusing to permit the carrier to cross its property if—

- (A) the construction does not unreasonably interfere with the operation of the crossed line;

(B) the operation does not materially interfere with the operation of the crossed line; and

(C) the owner of the crossing line compensates the owner of the crossed line.

(2) If the parties are unable to agree on the terms of operation or the amount of payment for purposes of paragraph (1) of this subsection, either party may submit the matters in dispute to the Board for determination. The Board shall make a determination under this paragraph within 120 days after the dispute is submitted for determination.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 822.)

#### PRIOR PROVISIONS

A prior section 10901, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1402; Pub. L. 96-448, title II, §221, Oct. 14, 1980, 94 Stat. 1928, related to authorizing construction and operation of railroad lines, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

#### § 10902. Short line purchases by Class II and Class III rail carriers

(a) A Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may acquire or operate an extended or additional rail line under this section only if the Board issues a certificate authorizing such activity under subsection (c).

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest.

(d) The Board shall require any Class II rail carrier which receives a certificate under subsection (c) of this section to provide a fair and equitable arrangement for the protection of the interests of employees who may be affected thereby. The arrangement shall consist exclusively of one year of severance pay, which shall not exceed the amount of earnings from railroad employment of the employee during the 12-month period immediately preceding the date on which the application for such certificate is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of the employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction to which the certificate applies. The parties may agree to terms other than as provided in this subsection. The Board shall not require such an arrangement from a Class III rail carrier which receives a certificate under subsection (c) of this section.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 823.)

PRIOR PROVISIONS

A prior section 10902, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1403, related to authorizing action by rail carriers to provide adequate, efficient, and safe facilities.

**§ 10903. Filing and procedure for application to abandon or discontinue**

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

- (A) abandon any part of its railroad lines; or
- (B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application shall include—

(A) an accurate and understandable summary of the rail carrier's reasons for the proposed abandonment or discontinuance;

(B) a statement indicating that each interested person is entitled to make recommendations to the Board on the future of the rail line; and

(C)(i) a statement that the line is available for subsidy or sale in accordance with section 10904 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the annual subsidy and minimum purchase price, calculated in accordance with section 10904 of this title, and (iii) the name and business address of the person who is authorized to discuss the subsidy or sale terms for the rail carrier.

(3) The rail carrier shall—

(A) send by certified mail notice of the application to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Board) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the application filed with the Board an affidavit certifying the manner in which subparagraphs (A) through (D) of this paragraph have been satisfied, and certifying that subparagraphs (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

(b)(1) Except as provided in subsection (d), abandonment and discontinuance may occur as provided in section 10904.

(2) The Board shall require as a condition of any abandonment or discontinuance under this section provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11326(a) and 24706(c)<sup>1</sup> of this title before May 31, 1998.

(c)(1) In this subsection, the term "potentially subject to abandonment" has the meaning given the term in regulations of the Board. The regulations may include standards that vary by region of the United States and by railroad or group of railroads.

(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the rail carrier. The rail carrier shall submit to the Board and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

(B) identify each railroad line for which the rail carrier plans to file an application to abandon or discontinue under subsection (a) of this section.

(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may—

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

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

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

(e) Subject to this section and sections 10904 and 10905 of this title, if the Board—

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

(A) approve the application as filed; or

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

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

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 823; amended Pub. L. 112-141, div. C, title II, §32932(b), July 6, 2012, 126 Stat. 829.)

REFERENCES IN TEXT

Section 24706(c) of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105-134, title I, §142(a), Dec. 2, 1997, 111 Stat. 2576, effective 180 days after Dec. 2, 1997.

PRIOR PROVISIONS

A prior section 10903, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1403; Pub. L. 96-448, title IV, §402(a), Oct. 14, 1980, 94 Stat. 1941; Pub. L. 98-216, §2(14), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(24), July 5, 1994, 108 Stat. 1378, related to authorizing abandonment and discontinuance of railroad lines and rail transportation.

<sup>1</sup> See References in Text note below.

## AMENDMENTS

2012—Subsec. (b)(2). Pub. L. 112-141 substituted “24706(c) of this title before May 31, 1998” for “24706(c) of this title”.

## EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

## RAILROAD BRANCHLINE ABANDONMENTS BY BURLINGTON NORTHERN RAILROAD IN NORTH DAKOTA

Pub. L. 97-102, title IV, § 402, Dec. 23, 1981, 95 Stat. 1465, as amended by Pub. L. 102-143, title III, § 343, Oct. 28, 1991, 105 Stat. 948, provided that: “Notwithstanding any other provision of law or of this Act, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline abandonments in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excess of a total of 350 miles, except that exempt abandonments and discontinuances that are effectuated pursuant to section 1152.50 of title 49 of the Code of Federal Regulations after the date of enactment of the Department of Transportation and Related Agencies Appropriations Act, 1992 [Oct. 28, 1991], shall not apply toward such 350-mile limit: *Provided*, That this section shall be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1982 (H.R. 4209), filed in the House of Representatives on November 13, 1981 (H. Rept. No. 97-331).” [Section 311 of H.R. 4209 is section 311 of Pub. L. 97-102, title III, Dec. 23, 1981, 95 Stat. 1460, which is not classified to the Code.] Similar provisions were contained in Pub. L. 97-92, title IV, § 115, Dec. 15, 1981, 95 Stat. 1196.

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of this title, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of this title.]

**§ 10904. Offers of financial assistance to avoid abandonment and discontinuance**

(a) In this section—

(1) the term “avoidable cost” means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

(A) working capital and required capital expenditure;

(B) expenditures to eliminate deferred maintenance;

(C) the current cost of freight cars, locomotives, and other equipment; and

(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

(2) the term “reasonable return” means—

(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and

(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

(b) Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board—

(1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(2) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;

(3) traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad line; and

(4) any other information that the Board considers necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

(c) Within 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier's estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

(d)(1) Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with section 10903.

(2) If the Board finds that such an offer or offers of financial assistance has been made within such period, abandonment or discontinuance shall be postponed until—

(A) the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or

(B) the conditions and amount of compensation are established under subsection (f).

(e) Except as provided in subsection (f)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Board establish the conditions and amount of compensation.

(f)(1) Whenever the Board is requested to establish the conditions and amount of compensation under this section—

(A) the Board shall render its decision within 30 days;

(B) for proposed sales, the Board shall determine the price and other terms of sale, except

that in no case shall the Board set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services); and

(C) for proposed subsidies, the Board shall establish the compensation as the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line.

(2) The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board's decision. In such a case, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered pursuant to paragraph (3) of this subsection.

(3) If a rail carrier receives more than one offer to subsidize or purchase, it shall select the offeror with whom it wishes to transact business, and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation before the 40th day after the expiration of the 4-month period described in subsection (c). If no agreement on subsidy or sale is reached within such 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 4-month period described in subsection (c) may request that the Board establish the conditions and amount of compensation. If the Board has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 4-month period described in subsection (c) may accept the Board's decision within 20 days after such decision, and the Board shall require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board's decision.

(4)(A) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

(B) No subsidy arrangement approved under this section shall remain in effect for more than one year, unless otherwise mutually agreed by the parties.

(g) Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 11101(a), is extinguished.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 825.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10905 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10904, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1404; Pub. L. 96-448, title IV, §402(b), Oct. 14, 1980, 94 Stat. 1941; Pub. L. 98-216, §2(4), Feb. 14, 1984, 98 Stat. 5, related to filing and procedure for applications to abandon or discontinue railroad lines or rail transportation, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 10903 of this title.

#### § 10905. Offering abandoned rail properties for sale for public purposes

When the Board approves an application to abandon or discontinue under section 10903, the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Board finds that the rail properties proposed to be abandoned are appropriate for public purposes and not required for continued rail operations, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Board. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 827.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10906 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10905, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1405; Pub. L. 96-448, title IV, §402(c), Oct. 14, 1980, 94 Stat. 1942; Pub. L. 103-272, §4(j)(26), July 5, 1994, 108 Stat. 1369, related to offers of financial assistance to avoid abandonment and discontinuance, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 10904 of this title.

#### § 10906. Exception

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the Board, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 827.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10907 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10906, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1406, related to offering abandoned rail properties for sale for public purposes, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 10905 of this title.

#### § 10907. Railroad development

(a) In this section, the term "financially responsible person" means a person who—

(1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and

(2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

(b)(1) When the Board finds that—

(A)(i) the public convenience and necessity require or permit the sale of a particular railroad line under this section; or

(ii) a railroad line is on a system diagram map as required under section 10903 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and

(B) an application to purchase such line has been filed by a financially responsible person,

the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

(2) For purposes of this subsection, the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.

(c)(1) For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that—

(A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

(B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

(C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

(2) In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to

the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 828.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10910 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10907 to 10910 and 10921 to 10936 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10907, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1407, related to rail carriers entering into arrangements for joint use or ownership of spur, industrial, team, switching, or side tracks, and deprived Interstate Commerce Commission of authority over such tracks when located in one State or over certain electric railways. See sections 10102, 10501, and 10906 of this title.

Section 10908, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1407, related to discontinuing or changing interstate train or ferry transportation subject to State law.

Section 10909, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1408, related to discontinuing or changing train or ferry transportation in one State.

Section 10910, added Pub. L. 96-448, title IV, §401(a), Oct. 14, 1980, 94 Stat. 1939; amended Pub. L. 97-468, title V, §506(a), Jan. 14, 1983, 96 Stat. 2553; Pub. L. 103-272, §4(j)(27), July 5, 1994, 108 Stat. 1369, related to railroad development. See section 10907 of this title.

Section 10921, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1409, related to requirement for certificate, permit, or license. See section 13901 of this title.

Section 10922, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1409; Pub. L. 96-296, §§5(a), 6, 34(a), July 1, 1980, 94 Stat. 794, 796, 825; Pub. L. 96-454, §10(a), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97-261, §§6(a)-(c), (g), 7, 8, Sept. 20, 1982, 96 Stat. 1103, 1107, 1108; Pub. L. 98-554, title II, §§225(a), (b), 226(b), Oct. 30, 1984, 98 Stat. 2847, 2848, 2850; Pub. L. 100-17, title III, §§339, 340(a), Apr. 2, 1987, 101 Stat. 243, 245; Pub. L. 100-690, title IX, §911(g), Nov. 18, 1988, 102 Stat. 4533; Pub. L. 102-240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 103-272, §5(m)(25), July 5, 1994, 108 Stat. 1378; Pub. L. 103-311, title II, §207, Aug. 26, 1994, 108 Stat. 1686; Pub. L. 103-429, §7(a)(4)(D), Oct. 31, 1994, 108 Stat. 4389, related to certificates of motor and water common carriers. See section 13902 of this title.

Section 10923, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1410; Pub. L. 96-258, §1(9), June 3, 1980, 94 Stat. 426; Pub. L. 96-296, §§10(a)(2), (3), 34(b), July 1, 1980, 94 Stat. 799, 800, 825; Pub. L. 97-261, §13(a), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 99-521, §8(a)(1), (2), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103-311, title II, §208, Aug. 26, 1994, 108 Stat. 1687, related to permits of motor and water contract carriers and household goods freight forwarders. See section 13903 of this title.

Section 10924, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96-296, §17(a), July 1, 1980, 94 Stat. 810; Pub. L. 97-261, §14(a)-(c), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 103-272, §4(j)(28), July 5, 1994, 108 Stat. 1370, related to licenses of motor carrier brokers. See section 13904 of this title.

Section 10925, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96-296, §§10(e), 17(b), July 1, 1980, 94 Stat. 801, 811; Pub. L. 97-261, §§13(b), 22, Sept. 20, 1982, 96 Stat. 1114, 1123; Pub. L. 97-449, §5(g)(6), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 99-521, §8(b), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103-311, title II, §209, Aug. 26, 1994, 108 Stat. 1688, related to effective periods of certificates, permits, and licenses. See section 13905 of this title.

Section 10926, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 99-521, §8(c), Oct. 22, 1986, 100 Stat. 2996, related to transfers of certificates and permits.

Section 10927, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 96-296, §29, July 1, 1980, 94 Stat. 820; Pub. L. 97-261, §18(h), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 98-554, title II, §226(c)(2), (3), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 99-521, §8(d), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 100-690, title IX, §911(h), Nov. 18, 1988, 102 Stat. 4534; Pub. L. 103-272, §5(m)(26), July 5, 1994, 108 Stat. 1378, related to security of motor carriers, brokers, and freight forwarders. See section 13906 of this title.

Section 10928, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1414; Pub. L. 96-296, §23, July 1, 1980, 94 Stat. 814; Pub. L. 97-261, §15, Sept. 20, 1982, 96 Stat. 1114, related to temporary authority for motor and water carriers.

Section 10929, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1415, related to temporary authority for previously exempt water transportation.

Section 10930, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1415; Pub. L. 96-296, §10(b), July 1, 1980, 94 Stat. 800; Pub. L. 99-521, §8(e), Oct. 22, 1986, 100 Stat. 2996, related to limitations on certificates and permits.

Section 10931, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1416, related to motor common carriers providing transportation entirely in one State.

Section 10932, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1417, related to motor carrier savings provisions.

Section 10933, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1418; Pub. L. 99-521, §8(f)(1), (2), Oct. 22, 1986, 100 Stat. 2996, 2997, related to authorizing abandonment of household goods freight forwarder service.

Section 10934, added Pub. L. 96-454, §5(a)(1), Oct. 15, 1980, 94 Stat. 2013; amended Pub. L. 98-554, title II, §227(a)(2), Oct. 30, 1984, 98 Stat. 2852, related to household goods agents. See section 13907 of this title.

Section 10935, added Pub. L. 97-261, §16(a), Sept. 20, 1982, 96 Stat. 1115; amended Pub. L. 103-272, §5(m)(27), July 5, 1994, 108 Stat. 1378, related to discontinuing bus transportation in one State.

Section 10936, added Pub. L. 103-311, title II, §211(a), Aug. 26, 1994, 108 Stat. 1689, related to limitation on State regulation of intrastate passengers by bus.

#### § 10908. Regulation of solid waste rail transfer facilities

(a) IN GENERAL.—Each solid waste rail transfer facility shall be subject to and shall comply with all applicable Federal and State requirements, both substantive and procedural, including judicial and administrative orders and fines, respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, including laws governing solid waste, to the same extent as required for any similar solid waste management facility, as defined in section 1004(29) of the Solid Waste Disposal Act (42 U.S.C. 6903(29))<sup>1</sup> that is not owned or operated by or on behalf of a rail carrier, except as provided for in section 10909 of this chapter.

(b) EXISTING FACILITIES.—

(1) STATE LAWS AND STANDARDS.—Not later than 90 days after the date of enactment of the Clean Railroads Act of 2008, a solid waste rail transfer facility operating as of such date of enactment shall comply with all Federal and State requirements pursuant to subsection (a) other than those provisions requiring permits.

(2) PERMIT REQUIREMENTS.—

(A) STATE NON-SITING PERMITS.—Any solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a permit required pursuant to subsection (a), other than a siting permit for the facility, as of the date of enactment of the Clean Railroads Act of 2008 shall not be required to possess any such permits in order to operate the facility—

(i) if, within 180 days after such date of enactment, the solid waste rail transfer facility has submitted, in good faith, a complete application for all permits, except siting permits, required pursuant to subsection (a) to the appropriate permitting agency authorized to grant such permits; and

(ii) until the permitting agency has either approved or denied the solid waste rail transfer facility's application for each permit.

(B) SITING PERMITS AND REQUIREMENTS.—A solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a State siting permit required pursuant to

<sup>1</sup> So in original. Probably should be followed by a comma.

subsection (a) as of such date of enactment shall not be required to possess any siting permit to continue to operate or comply with any State land use requirements. The Governor of a State in which the facility is located, or his or her designee, may petition the Board to require the facility to apply for a land-use exemption pursuant to section 10909 of this chapter. The Board shall accept the petition, and the facility shall be required to have a Board-issued land-use exemption in order to continue to operate, pursuant to section 10909 of this chapter.

(c) **COMMON CARRIER OBLIGATION.**—No prospective or current rail carrier customer may demand solid waste rail transfer service from a rail carrier at a solid waste rail transfer facility that does not already possess the necessary Federal land-use exemption and State permits at the location where service is requested.

(d) **NON-WASTE COMMODITIES.**—Nothing in this section or section 10909 of this chapter shall affect a rail carrier's ability to conduct transportation-related activities with respect to commodities other than solid waste.

(e) **DEFINITIONS.**—

(1) **IN GENERAL.**—In this section:

(A) **COMMERCIAL AND RETAIL WASTE.**—The term “commercial and retail waste” means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(B) **CONSTRUCTION AND DEMOLITION DEBRIS.**—The term “construction and demolition debris” means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(C) **HOUSEHOLD WASTE.**—The term “household waste” means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(D) **INDUSTRIAL WASTE.**—The term “industrial waste” means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, non-hazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), mining or oil and gas waste.

(E) **INSTITUTIONAL WASTE.**—The term “institutional waste” means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(F) **MUNICIPAL SOLID WASTE.**—The term “municipal solid waste” means—

- (i) household waste;
- (ii) commercial and retail waste; and
- (iii) institutional waste.

(G) **SOLID WASTE.**—With the exception of waste generated by a rail carrier during

track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles) or waste generated as a result of a railroad accident, incident, or derailment, the term “solid waste” means—

- (i) construction and demolition debris;
- (ii) municipal solid waste;
- (iii) household waste;
- (iv) commercial and retail waste;
- (v) institutional waste;
- (vi) sludge;
- (vii) industrial waste; and
- (viii) other solid waste, as determined appropriate by the Board.

(H) **SOLID WASTE RAIL TRANSFER FACILITY.**—The term “solid waste rail transfer facility”—

(i) means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in section 10102 of this title) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but

(ii) does not include—

(I) the portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(II) a facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.

(I) **SLUDGE.**—The term “sludge” means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(2) **EXCEPTIONS.**—Notwithstanding paragraph (1), the terms “household waste”, “commercial and retail waste”, and “institutional waste” do not include—

- (A) yard waste and refuse-derived fuel;
- (B) used oil;
- (C) wood pallets;
- (D) clean wood;
- (E) medical or infectious waste; or
- (F) motor vehicles (including motor vehicle parts or vehicle fluff).

(3) **STATE REQUIREMENTS.**—In this section the term “State requirements” does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a State, including a locality or municipality, unless a State expressly delegates such authority to such political subdivision.

(Added Pub. L. 110-432, div. A, title VI, §603(a), Oct. 16, 2008, 122 Stat. 4900.)

REFERENCES IN TEXT

The date of enactment of the Clean Railroads Act of 2008, referred to in subsec. (b), is the date of enactment

of title VI of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

The Solid Waste Disposal Act, referred to in subsec. (e)(1)(D), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

#### PRIOR PROVISIONS

For prior section 10908, see note set out under section 10907 of this title.

#### § 10909. Solid waste rail transfer facility land-use exemption

(a) **AUTHORITY.**—The Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed to be operated by or on behalf of a rail carrier if—

(1) the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility petitions the Board for such an exemption; or

(2) the Governor of a State in which a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 is located, or his or her designee, petitions the Board to initiate a permit proceeding for that particular facility.

(b) **LAND-USE EXEMPTION PROCEDURES.**—Not later than 90 days after the date of enactment of the Clean Railroads Act of 2008, the Board shall publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions. At a minimum, the procedures shall address—

(1) the information that each application should contain to explain how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment;

(2) the opportunity for public notice and comment including notification of the municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is proposed to be located;

(3) the timeline for Board review, including a requirement that the Board approve or deny an exemption within 90 days after the full record for the application is developed;

(4) the expedited review timelines for petitions for modifications, amendments, or revocations of granted exemptions;

(5) the process for a State to petition the Board to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a siting permit; and

(6) the process for a solid waste transfer facility or a rail carrier that owns or operates such a facility to petition the Board for a land-use exemption.

(c) **STANDARD FOR REVIEW.**—

(1) The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board may not grant a land-use exemption for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, a National Monument, or lands referenced in Public Law 108-421 for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(d) **CONSIDERATIONS.**—When evaluating an application under this section, the Board shall consider and give due weight to the following, as applicable:

(1) the land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) the land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) regional transportation planning requirements developed pursuant to Federal and State law;

(4) regional solid waste disposal plans developed pursuant to State or Federal law;

(5) any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) any other relevant factors, as determined by the Board.

(e) **EXISTING FACILITIES.**—Upon the granting of a petition from the State in which a solid waste rail transfer facility is operating as of the date of enactment of the Clean Railroads Act of 2008 by the Board, the facility shall submit a complete application for a siting permit to the Board pursuant to the procedures issued pursuant to subsection (b). No State may enforce a law, regulation, order, or other requirement affecting the siting of a facility that is operating as of the date of enactment of the Clean Rail-

roads Act of 2008 until the Board has approved or denied a permit pursuant to subsection (c).

(f) EFFECT OF LAND-USE EXEMPTION.—If the Board grants a land-use exemption to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. An exemption may require compliance with such State laws, regulations, orders, or other requirements.

(g) INJUNCTIVE RELIEF.—Nothing in this section precludes a person from seeking an injunction to enjoin a solid waste rail transfer facility from being constructed or operated by or on behalf of a rail carrier if that facility has materially violated, or will materially violate, its land-use exemption or if it failed to receive a valid land-use exemption under this section.

(h) FEES.—The Board may charge permit applicants reasonable fees to implement this section, including the costs of third-party consultants.

(i) DEFINITIONS.—In this section the terms “solid waste”, “solid waste rail transfer facility”, and “State requirements” have the meaning given such terms in section 10908(e).

(Added Pub. L. 110-432, div. A, title VI, §604(a), Oct. 16, 2008, 122 Stat. 4903; amended Pub. L. 114-94, div. A, title XI, §11316(b), Dec. 4, 2015, 129 Stat. 1676.)

#### REFERENCES IN TEXT

The date of enactment of the Clean Railroads Act of 2008, referred to in subsecs. (a)(2), (b), and (e), is the date of enactment of title VI of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

Public Law 108-421, referred to in subsec. (c)(2), is Pub. L. 108-421, Nov. 30, 2004, 118 Stat. 2375, known as the Highlands Conservation Act, which is not classified to the Code.

#### PRIOR PROVISIONS

For prior section 10909, see note set out under section 10907 of this title.

#### AMENDMENTS

2015—Subsec. (b). Pub. L. 114-94, §11316(b)(1), substituted “Clean Railroads Act of 2008” for “Clean Railroad Act of 2008” in introductory provisions.

Subsec. (e). Pub. L. 114-94, §11316(b)(2), substituted “Upon the granting of a petition from the State” for “Upon the granting of petition from the State”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

### § 10910. Effect on other statutes and authorities

Nothing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.

(Added Pub. L. 110-432, div. A, title VI, §605(a), Oct. 16, 2008, 122 Stat. 4905.)

#### PRIOR PROVISIONS

For prior section 10910, see note set out under section 10907 of this title.

## CHAPTER 111—OPERATIONS

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### SUBCHAPTER I—GENERAL REQUIREMENTS

#### § 11101. Common carrier transportation, service, and rates

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

(b) A rail carrier shall also provide to any person, on request, the carrier's rates and other service terms. The response by a rail carrier to a request for the carrier's rates and other service terms shall be—

- (1) in writing and forwarded to the requesting person promptly after receipt of the request; or
- (2) promptly made available in electronic form.

(c) A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

- (1) has requested such rates or terms under subsection (b); or
- (2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

(d) With respect to transportation of agricultural products, in addition to the requirements of subsections (a), (b), and (c), a rail carrier shall publish, make available, and retain for public inspection its common carrier rates, schedules

of rates, and other service terms, and any proposed and actual changes to such rates and service terms. For purposes of this subsection, agricultural products shall include grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and all products thereof, and fertilizer.

(e) A rail carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d).

(f) The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. Final regulations shall be adopted by the Board not later than 180 days after January 1, 1996.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 830; amended Pub. L. 104-287, §5(25), Oct. 11, 1996, 110 Stat. 3390.)

#### PRIOR PROVISIONS

A prior section 11101, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1419; Pub. L. 96-258, §1(10), June 3, 1980, 94 Stat. 426; Pub. L. 96-448, title II, §222, Oct. 14, 1980, 94 Stat. 1929; Pub. L. 99-521, §9(a), Oct. 22, 1986, 100 Stat. 2997; Pub. L. 103-180, §8, Dec. 3, 1993, 107 Stat. 2052, related to duties of carriers to provide transportation and service, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11101, 13710, 14101, and 15701 of this title.

#### AMENDMENTS

1996—Subsec. (f). Pub. L. 104-287 substituted “January 1, 1996” for “the effective date of the ICC Termination Act of 1995”.

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

### § 11102. Use of terminal facilities

(a) The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

(b) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as ap-

propriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

(c)(1) The Board may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.

(2) The Board may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.

(d) The Board shall complete any proceeding under subsection (a) or (b) within 180 days after the filing of the request for relief.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 831.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11103 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11102, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1419, related to classification of carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### § 11103. Switch connections and tracks

(a) On application of the owner of a lateral branch line of railroad, or of a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection—

- (1) is reasonably practicable;
- (2) can be made safely; and
- (3) will furnish sufficient business to justify its construction and maintenance.

(b) If a rail carrier fails to install and operate a switch connection after application is made under subsection (a) of this section, the owner of the lateral branch line of railroad or the shipper may file a complaint with the Board under section 11701 of this title. The Board shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Board may direct the rail carrier to comply with subsection (a) of this section only after a full hearing.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 831.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11104 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11103 to 11111 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11103, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1419; Pub. L. 96-448, title II, §223, Oct. 14, 1980, 94 Stat. 1929, related to use of terminal facilities. See section 11102 of this title.

Section 11104, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1420, related to switch connections and tracks. See section 11103 of this title.

Section 11105, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1420, related to protective services.

Section 11106, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1420, related to identification of motor vehicles.

Section 11107, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1420; Pub. L. 96-296, §15(d), July 1, 1980, 94 Stat. 809, related to leased motor vehicles. See section 14102 of this title.

Section 11108, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1421, related to water carriers subject to unreasonable discrimination in foreign transportation.

Section 11109, added Pub. L. 96-296, §15(a)(1), July 1, 1980, 94 Stat. 808, related to loading and unloading motor vehicles. See section 14103 of this title.

Section 11110, added Pub. L. 96-454, §6(a)(1), Oct. 15, 1980, 94 Stat. 2015, related to household goods carrier operations. See section 14104 of this title.

Section 11111, added Pub. L. 97-261, §25(d)(1), Sept. 20, 1982, 96 Stat. 1125, related to use of citizen band radios on buses.

## SUBCHAPTER II—CAR SERVICE

### § 11121. Criteria

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Board may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service. The Board may begin a proceeding under this paragraph when an interested person files an application with it. The Board may act only after a hearing on the record and an affirmative finding, based on the evidence presented, that—

(A) providing the facilities or equipment will not materially and adversely affect the ability of the rail carrier to provide safe and adequate transportation;

(B) the amount spent for the facilities or equipment, including a return equal to the rail carrier's current cost of capital, will be recovered; and

(C) providing the facilities or equipment will not impair the ability of the rail carrier to attract adequate capital.

(2) The Board may require a rail carrier to file its car service rules with the Board.

(b) The Board may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 11123 and 11124(a)(1) of this title.

(c) The Board shall consult, as it considers necessary, with the National Grain Car Council on matters within the charter of that body.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 832.)

#### PRIOR PROVISIONS

A prior section 11121, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1421; Pub. L. 96-258, §1(11), June 3, 1980, 94 Stat.

426, related to criteria of rail carriers to furnish safe and adequate car service, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### § 11122. Compensation and practice

(a) The regulations of the Board on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include—

(1) the compensation to be paid for the use of a locomotive, freight car, or other vehicle;

(2) the other terms of any arrangement for the use by a rail carrier of a locomotive, freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person; and

(3) sanctions for nonobservance.

(b) The rate of compensation to be paid for each type of freight car shall be determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost giving consideration to current costs of capital, repairs, materials, parts, and labor. In determining the rate of compensation, the Board shall consider the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 832.)

#### PRIOR PROVISIONS

A prior section 11122, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1421; Pub. L. 96-448, title II, §224(a), Oct. 14, 1980, 94 Stat. 1929, related to use of and compensation for freight cars, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### § 11123. Situations requiring immediate action to serve the public

(a) When the Board determines that shortage of equipment, congestion of traffic, unauthorized cessation of operations, failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days—

(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

(2) require joint or common use of railroad facilities;

(3) prescribe temporary through routes;

(4) give directions for—

(A) preference or priority in transportation;

(B) embargoes; or

(C) movement of traffic under permits; or

(5) in the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, direct the continuation of the operations and dispatching, maintenance, and other necessary infrastructure functions related to the operations.

(b)(1) Except with respect to proceedings under paragraph (2) of this subsection, the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(2) Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them. The Board may act under subsection (a) before conducting a proceeding under this paragraph.

(3)(A) Except as provided in subparagraph (B), when a rail carrier is directed under this section to operate the lines of another rail carrier due to that carrier's cessation of operations, compensation for the directed operations shall derive only from revenues generated by the directed operations.

(B) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, the Board shall provide funding to fully reimburse the directed service provider for its costs associated with the activities directed under subsection (a), including the payment of increased insurance premiums. The Board shall order complete indemnification against any and all claims associated with the provision of service to which the directed rail carrier may be exposed.

(c)(1) The Board may extend any action taken under subsection (a) of this section beyond 30 days if the Board finds that a transportation emergency described in subsection (a) continues to exist. Action by the Board under subsection (a) of this section may not remain in effect for more than 240 days beyond the initial 30-day period.

(2) The Board may not take action under this section that would—

(A) cause a rail carrier to operate in violation of this part; or

(B) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

(3) A rail carrier directed by the Board to take action under this section is not responsible, as a result of that action, for debts of any other rail carrier.

(4) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by cessation of service by the National Railroad Passenger Corporation, the Board may not direct a rail carrier to undertake activities under subsection (a) to continue such operations unless—

(A) the Board first affirmatively finds that the rail carrier is operationally capable of conducting the directed service in a safe and efficient manner; and

(B) the funding for such directed service required by subparagraph (B) of subsection (b)(3) is provided in advance in appropriations Acts.

(d) In carrying out this section, the Board shall require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the traffic subject to the action of the Board.

(e) For purposes of this section, the National Railroad Passenger Corporation and any entity providing commuter rail passenger transportation shall be considered rail carriers subject to the Board's jurisdiction.

(f) For purposes of this section, the term "commuter rail passenger transportation" has the meaning given that term in section 24102(4).<sup>1</sup>

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 833; amended Pub. L. 108-199, div. F, title I, §150(1), Jan. 23, 2004, 118 Stat. 302.)

#### REFERENCES IN TEXT

Section 24102 of this title, referred to in subsec. (f), was subsequently amended, and section 24102(4) no longer defines "commuter rail passenger transportation". However, such term is defined elsewhere in that section.

#### PRIOR PROVISIONS

A prior section 11123, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1422; Pub. L. 96-448, title II, §226, Oct. 14, 1980, 94 Stat. 1930, related to situations requiring immediate action, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-199, §150(1)(A)(i), inserted "failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation," after "cessation of operations," in introductory provisions.

Subsec. (a)(5). Pub. L. 108-199, §150(1)(A)(ii)-(iv), added par. (5).

Subsec. (b)(3). Pub. L. 108-199, §150(1)(B), designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), when" for "When", and added subpar. (B).

Subsec. (c)(4). Pub. L. 108-199, §150(1)(C), added par. (4).

Subsecs. (e), (f). Pub. L. 108-199, §150(1)(D), added subsecs. (e) and (f).

#### § 11124. War emergencies; embargoes imposed by carriers

(a)(1) When the President, during time of war or threatened war, notifies the Board that it is essential to the defense and security of the United States to give preference or priority to the movement of certain traffic, the Board shall direct that preference or priority be given to that traffic.

(2) When the President, during time of war or threatened war, demands that preference and precedence be given to the transportation of troops and material of war over all other traffic, all rail carriers providing transportation subject to the jurisdiction of the Board under this part shall adopt every means within their control to facilitate and expedite the military traffic.

(b) An embargo imposed by any such rail carrier does not apply to shipments consigned to

<sup>1</sup> See References in Text note below.

agents of the United States Government for its use. The rail carrier shall deliver those shipments as promptly as possible.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11128 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11124 to 11128 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11124, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1422, related to rerouting traffic on failure of rail carrier to serve the public.

Section 11125, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1423; Pub. L. 98-216, §2(15), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(28), July 5, 1994, 108 Stat. 1378, related to directed rail transportation.

Section 11126, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1424; Pub. L. 103-272, §5(m)(29), July 5, 1994, 108 Stat. 1378, related to distribution of coal cars.

Section 11127, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1424; Pub. L. 99-521, §9(b)(1), (2), Oct. 22, 1986, 100 Stat. 2997, related to service of household goods freight forwarders.

Section 11128, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1425, related to war emergencies and embargoes imposed by carriers. See section 11124 of this title.

### SUBCHAPTER III—REPORTS AND RECORDS

#### § 11141. Definitions

In this subchapter—

(1) the terms “rail carrier” and “lessor” include a receiver or trustee of a rail carrier and lessor, respectively;

(2) the term “lessor” means a person owning a railroad that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Board under this part; and

(3) the term “association” means an organization maintained by or in the interest of a group of rail carriers providing transportation or service subject to the jurisdiction of the Board under this part that performs a service, or engages in activities, related to transportation under this part.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

#### PRIOR PROVISIONS

A prior section 11141, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1425; Pub. L. 99-521, §9(c), Oct. 22, 1986, 100 Stat. 2997, defined terms for purposes of former sections 11141 to 11145 of this title, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11141, 14121, and 15721 of this title.

#### § 11142. Uniform accounting system

The Board may prescribe a uniform accounting system for classes of rail carriers providing transportation subject to the jurisdiction of the Board under this part. To the maximum extent practicable, the Board shall conform such system to generally accepted accounting principles, and shall administer this subchapter in accordance with such principles.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

#### PRIOR PROVISIONS

A prior section 11142, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1425; Pub. L. 96-448, title III, §301, Oct. 14, 1980, 94

Stat. 1934, related to uniform accounting system, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11143. Depreciation charges

The Board shall, for a class of rail carriers providing transportation subject to its jurisdiction under this part, prescribe, and change when necessary, those classes of property for which depreciation charges may be included under operating expenses and a rate of depreciation that may be charged to a class of property. The Board may classify those rail carriers for purposes of this section. A rail carrier for whom depreciation charges and rates of depreciation are in effect under this section for any class of property may not—

(1) charge to operating expenses a depreciation charge on a class of property other than that prescribed by the Board;

(2) charge another rate of depreciation; or

(3) include other depreciation charges in operating expenses.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

#### PRIOR PROVISIONS

A prior section 11143, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1426, related to depreciation charges, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11144. Records: form; inspection; preservation

(a) The Board may prescribe the form of records required to be prepared or compiled under this subchapter—

(1) by rail carriers and lessors, including records related to movement of traffic and receipts and expenditures of money; and

(2) by persons furnishing cars to or for a rail carrier providing transportation subject to the jurisdiction of the Board under this part to the extent related to those cars or that service.

(b) The Board, or an employee designated by the Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a rail carrier or lessor; and

(2) inspect and copy any record of—

(A) a rail carrier, lessor, or association;

(B) a person controlling, controlled by, or under common control with a rail carrier if the Board considers inspection relevant to that person's relation to, or transaction with, that rail carrier; and

(C) a person furnishing cars to or for a rail carrier if the Board prescribed the form of that record.

(c) The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 835.)

#### PRIOR PROVISIONS

A prior section 11144, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1426; Pub. L. 96-296, §24(c), July 1, 1980, 94 Stat. 816, related to form, inspection, and preservation of records, prior to the general amendment of this sub-

title by Pub. L. 104-88, §102(a). See sections 11144, 14122, and 15722 of this title.

**§ 11145. Reports by rail carriers, lessors, and associations**

(a) The Board may require—

(1) rail carriers, lessors, and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it; and

(2) a person furnishing cars to a rail carrier to file reports with the Board containing answers to questions about those cars.

(b)(1) An annual report shall contain an account, in as much detail as the Board may require, of the affairs of the rail carrier, lessor, or association for the 12-month period ending on December 31 of each year.

(2) An annual report shall be filed with the Board by the end of the third month after the end of the year for which the report is made unless the Board extends the filing date or changes the period covered by the report. The annual report and, if the Board requires, any other report made under this section, shall be made under oath.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 835.)

PRIOR PROVISIONS

A prior section 11145, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1427; Pub. L. 96-296, §5(b), July 1, 1980, 94 Stat. 796, related to reports by carriers, lessors, and associations, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11145, 14123, and 15723 of this title.

SUBCHAPTER IV—RAILROAD COST ACCOUNTING

**§ 11161. Implementation of cost accounting principles**

The Board shall periodically review its cost accounting rules and shall make such changes in those rules as are required to achieve the regulatory purposes of this part. The Board shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes. To the maximum extent practicable, the Board shall conform such rules to generally accepted accounting principles.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 835.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11163 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11161, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1934, related to Railroad Accounting Principles Board, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

**§ 11162. Rail carrier cost accounting system**

(a) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Board under section 11161 of this title. A rail carrier may,

after notifying the Board, make modifications in such system unless, within 60 days after the date of notification, the Board finds such modifications to be inconsistent with the rules promulgated by the Board under section 11161 of this title.

(b) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Board, the Board shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers, and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 836.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11164 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11162, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1935; amended Pub. L. 103-272, §4(j)(30), July 5, 1994, 108 Stat. 1370, related to cost accounting principles, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

**§ 11163. Cost availability**

As required by the rules of the Board governing discovery in Board proceedings, rail carriers shall make relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Board proceeding in which such data are required.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 836.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11165 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11163, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1936; amended Pub. L. 103-272, §4(j)(31), July 5, 1994, 108 Stat. 1370, related to implementation of cost accounting principles, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 11161 of this title.

**§ 11164. Accounting and cost reporting**

To obtain expense and revenue information for regulatory purposes, the Board may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Board under this part, prescribing expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 836.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11166 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11164 to 11168 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11164, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1936, related to certification of rail carrier cost accounting systems. See section 11162 of this title.

Section 11165, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1937, related to cost data availability. See section 11163 of this title.

Section 11166, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1937; amended Pub. L. 103-272, §4(j)(32), July 5, 1994, 108 Stat. 1370, related to accounting and cost reporting. See section 11164 of this title.

Section 11167, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1938; amended Pub. L. 103-272, §4(j)(33), July 5, 1994, 108 Stat. 1370, related to reports to Congress by Railroad Accounting Principles Board.

Section 11168, added Pub. L. 96-448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1938, authorized appropriations for fiscal years 1981 to 1983.

## CHAPTER 113—FINANCE

### SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

Sec.

11301. Equipment trusts: recordation; evidence of indebtedness.

### SUBCHAPTER II—COMBINATIONS

11321. Scope of authority.

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11325. Consolidation, merger, and acquisition of control: procedure.

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### SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

#### § 11301. Equipment trusts: recordation; evidence of indebtedness

(a) A mortgage (other than a mortgage under chapter 313 of title 46), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), intended for a use related to interstate commerce shall be filed with the Board in order to perfect the security interest that is the subject of such instrument. An assignment of a right or interest under one of those instruments and an amendment to that instrument or assignment including a release, discharge, or satisfaction of any part of it shall also be filed with the Board. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Board regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or

recordation of those documents. This section does not change chapter 313 of title 46.

(b) The Board shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Board shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

(c) The Board may to the greatest extent practicable perform its functions under this section through contracts with private sector entities.

(d) A mortgage, lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), or any assignment thereof, which—

(1) is duly constituted under the laws of a country other than the United States; and

(2) relates to property that bears the reporting marks and identification numbers of any person domiciled in or corporation organized under the laws of such country,

shall be recognized with the same effect as having been filed under this section.

(e) Interests with respect to which documents are filed or recognized under this section are deemed perfected in all jurisdictions, and shall be governed by applicable State or foreign law in all matters not specifically governed by this section.

(f) The Board shall collect, maintain, and keep open for public inspection a railway equipment register consistent with the manner and format maintained by the Interstate Commerce Commission as of January 1, 1996.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 837; amended Pub. L. 104-287, §5(25), Oct. 11, 1996, 110 Stat. 3390.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11303 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11301, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1428; Pub. L. 103-429, §6(16), Oct. 31, 1994, 108 Stat. 4379, related to authority of certain carriers to issue securities and assume obligations and liabilities, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11302, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1430; Pub. L. 96-296, §18(a), July 1, 1980, 96 Stat. 811, provided that section 11301 of this title applied to motor carriers and corporations subject to jurisdiction of Interstate Commerce Commission under former subchapter II of chapter 105 of this title, but did not apply to corporations under a certain capitalization, and that this section did not apply to Federal, State, or local governments, prior to repeal by Pub. L. 97-261, §§19(a), 31(a), Sept. 20, 1982, 96 Stat. 1121, 1129, effective on the 60th day after Sept. 20, 1982.

Prior sections 11303 and 11304 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11303, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1430; Pub. L. 103-272, §5(m)(30), July 5, 1994, 108 Stat. 1378, related to filing and recording of mortgages, leases, equipment trusts, and other agreements with Interstate Commerce Commission. See section 11301 of this title.

Section 11304, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1431; Pub. L. 96-258, §1(12), June 3, 1980, 94 Stat. 426, related to security interests in certain motor vehicles. See section 14301 of this title.

#### AMENDMENTS

1996—Subsec. (f). Pub. L. 104-287 substituted “January 1, 1996” for “the effective date of the ICC Termination Act of 1995”.

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 1301 of this title.

### SUBCHAPTER II—COMBINATIONS

#### § 11321. Scope of authority

(a) The authority of the Board under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

(b) A power granted under this subchapter to a carrier or corporation is in addition to and changes its powers under its corporate charter and under State law. Action under this subchapter does not establish or provide for establishing a corporation under the laws of the United States.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 838.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11341 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11321, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1432, related to limitations on ownership of cer-

tain water carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11322. Limitation on pooling and division of transportation or earnings

(a) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not agree or combine with another of those rail carriers to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section or section 11123 of this title. The Board may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

- (1) will be in the interest of better service to the public or of economy of operation; and
- (2) will not unreasonably restrain competition.

(b) The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.

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

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 838.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11342 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11322, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1433, related to restrictions on officers and directors of carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 11328 of this title.

#### § 11323. Consolidation, merger, and acquisition of control

(a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

- (1) Consolidation or merger of the properties or franchises of at least 2 rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.
- (2) A purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers.
- (3) Acquisition of control of a rail carrier by any number of rail carriers.
- (4) Acquisition of control of at least 2 rail carriers by a person that is not a rail carrier.
- (5) Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.
- (6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or manage-

ment, including the power to exercise control or management, in a common interest of more than one of those rail carriers, regardless of how that result is reached, only with the approval and authorization of the Board under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control or management:

(1) A transaction by a rail carrier that has the effect of putting that rail carrier and person affiliated with it, taken together, in control of another rail carrier.

(2) A transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and persons affiliated with it, taken together, in control of another rail carrier.

(3) A transaction by at least 2 persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier.

(c) A person is affiliated with a rail carrier under this subchapter if, because of the relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 838.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11343 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11323, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1433; Pub. L. 99-521, §10(a), (b)(1), Oct. 22, 1986, 100 Stat. 2997, related to limitation on ownership of other carriers by household goods freight forwarders, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11324. Consolidation, merger, and acquisition of control: conditions of approval

(a) The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority. When an application is filed with the Board, the Board shall notify the chief executive officer of each State in which property of the rail carriers involved in the proposed transaction is located and shall notify those rail carriers. The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.

(b) In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

(c) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Board may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that—

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Board shall, with respect to any application that is part of a plan or proposal developed under section 333(a)-(d) of this title, accord substantial weight to any recommendations of the Attorney General.

(e) No transaction described in section 11326(b) may have the effect of avoiding a collective bargaining agreement or shifting work from a rail carrier with a collective bargaining agreement to a rail carrier without a collective bargaining agreement.

(f)(1) To the extent provided in this subsection, a proceeding under this subchapter relating to a transaction involving at least one Class I rail carrier shall not be considered an adjudication required by statute to be determined on the record after opportunity for an agency hearing, for the purposes of subchapter II of chapter 5 of title 5, United States Code.

(2) Ex parte communications, as defined in section 551(14) of title 5, United States Code, shall be permitted in proceedings described in paragraph (1) of this subsection, subject to the requirements of paragraph (3) of this subsection.

(3)(A) Any member or employee of the Board who makes or receives a written ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place the communication in the public docket of the proceeding.

(B) Any member or employee of the Board who makes or receives an oral ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place a written summary of the oral communication in the public docket of the proceeding.

(4) Nothing in this subsection shall be construed to require the Board or any of its members or employees to engage in any ex parte communication with any person. Nothing in this subsection or any other law shall be construed to limit the authority of the members or employees of the Board, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 839.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11344 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### § 11325. Consolidation, merger, and acquisition of control: procedure

(a) The Board shall publish notice of the application under section 11324 in the Federal Register by the end of the 30th day after the application is filed with the Board. However, if the application is incomplete, the Board shall reject it by the end of that period. The order of rejection is a final action of the Board. The published notice shall indicate whether the application involves—

(1) the merger or control of at least two Class I railroads, as defined by the Board, to be decided within the time limits specified in subsection (b) of this section;

(2) transactions of regional or national transportation significance, to be decided within the time limits specified in subsection (c) of this section; or

(3) any other transaction covered by this section, to be decided within the time limits specified in subsection (d) of this section.

(b) If the application involves the merger or control of two or more Class I railroads, as defined by the Board, the following conditions apply:

(1) Written comments about an application may be filed with the Board within 45 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Attorney General and the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Board by the end of the 15th day after the date of receipt of the written comments.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 90th day after publication of notice under that subsection.

(3) The Board must conclude evidentiary proceedings by the end of 1 year after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(c) If the application involves a transaction other than the merger or control of at least two Class I railroads, as defined by the Board, which the Board has determined to be of regional or national transportation significance, the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 60th day after publication of notice under that subsection.

(3) The Board must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(d) For all applications under this section other than those specified in subsections (b) and (c) of this section, the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 45th day after the date on which it concludes the evidentiary proceedings.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 841.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11345 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### § 11326. Employee protective arrangements in transactions involving rail carriers

(a) Except as otherwise provided in this section, when approval is sought for a transaction under sections 11324 and 11325 of this title, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under section 5(2)(f) of the Interstate Commerce Act before February 5, 1976, and the terms established under section 24706(c)<sup>1</sup> of this title. Notwithstanding this part, the arrangement may be

<sup>1</sup> See References in Text note below.

made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board (or if an employee was employed for a lesser period of time by the rail carrier before the action became effective, for that lesser period).

(b) When approval is sought under sections 11324 and 11325 for a transaction involving one Class II and one or more Class III rail carriers, there shall be an arrangement as required under subsection (a) of this section, except that such arrangement shall be limited to one year of severance pay, which shall not exceed the amount of earnings from the railroad employment of that employee during the 12-month period immediately preceding the date on which the application for approval of such transaction is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of that employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction. The parties may agree to terms other than as provided in this subsection.

(c) When approval is sought under sections 11324 and 11325 for a transaction involving only Class III rail carriers, this section shall not apply.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 842.)

#### REFERENCES IN TEXT

Section 5(2)(f) of the Interstate Commerce Act, referred to in subsec. (a), was classified to section 5(2)(f) of former Title 49, Transportation, prior to repeal and reenactment as section 11347 of this title by Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1439. Section 11347 of this title was subsequently omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 24706(c) of this title, referred to in subsec. (a), was repealed by Pub. L. 105-134, title I, §142(a), Dec. 2, 1997, 111 Stat. 2576.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11347 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11327. Supplemental orders

When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 843.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11351 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11328. Restrictions on officers and directors

(a) A person may hold the position of officer or director of more than one rail carrier only when authorized by the Board. The Board may author-

ize a person to hold the position of officer or director of more than one of those carriers when public or private interests will not be adversely affected.

(b) This section shall not apply to an individual holding the position of officer or director only of Class III rail carriers.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 843.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11322 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11341 to 11351 and 11361 to 11367 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11341, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1434; Pub. L. 97-261, §21(a), Sept. 20, 1982, 96 Stat. 1122, related to exclusive authority of Interstate Commerce Commission under former sections 11341 to 11351 of this title. See sections 11321, 14302, and 14303 of this title.

Section 11342, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1434; Pub. L. 96-296, §20, July 1, 1980, 94 Stat. 811; Pub. L. 96-454, §5(c), Oct. 15, 1980, 94 Stat. 2014, related to limitation on pooling and division of transportation or earnings. See sections 11322 and 14302 of this title.

Section 11343, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1434; Pub. L. 96-296, §18(b), July 1, 1980, 94 Stat. 811; Pub. L. 97-261, §21(b), Sept. 20, 1982, 96 Stat. 1122, related to consolidation, merger, and acquisition of control. See sections 11323 and 14303 of this title.

Section 11344, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1436; Pub. L. 96-448, title II, §228(a)-(c), Oct. 14, 1980, 94 Stat. 1931; Pub. L. 97-261, §21(f), (g), Sept. 20, 1982, 96 Stat. 1123; Pub. L. 98-216, §2(4), Feb. 14, 1984, 98 Stat. 5, related to general procedures and conditions of approval of consolidations, mergers, and acquisitions of control. See sections 11324 and 14303 of this title.

Section 11345, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1436; Pub. L. 96-448, title II, §228(d), Oct. 14, 1980, 94 Stat. 1932, related to rail carrier procedures in consolidations, mergers, and acquisitions of control. See section 11325 of this title.

Section 11345a, added Pub. L. 96-296, §27(a), July 1, 1980, 94 Stat. 819; amended Pub. L. 97-261, §21(c), (d), Sept. 20, 1982, 96 Stat. 1123, related to motor carrier procedures in consolidations, mergers, and acquisitions of control. See section 14303 of this title.

Section 11346, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1437; Pub. L. 97-449, §5(g)(7), Jan. 12, 1983, 96 Stat. 2443, related to expedited rail carrier procedures in consolidations, mergers, and acquisitions of control.

Section 11347, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1439; Pub. L. 98-216, §2(16), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(31), July 5, 1994, 108 Stat. 1378, related to employee protective arrangements in transactions involving rail carriers. See section 11326 of this title.

Section 11348, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1439; Pub. L. 96-454, §8(b)(1), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97-261, §19(b), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 97-449, §5(g)(8), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98-554, title II, §227(a)(3), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103-272, §5(m)(32), July 5, 1994, 108 Stat. 1378; Pub. L. 103-429, §6(17), Oct. 31, 1994, 108 Stat. 4379, related to Interstate Commerce Commission authority over noncarriers that acquire control of carriers. See section 14303 of this title.

Section 11349, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1439, related to temporary operating approval for transactions involving motor and water carriers. See section 14303 of this title.

Section 11350, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1440, related to responsibility of Secretary of Transportation in certain transactions.

Section 11351, added Pub. L. 96-258, §1(13)(A), June 3, 1980, 94 Stat. 427, related to orders by Interstate Commerce Commission supplemental to orders made in pro-

ceedings under former sections 11342 to 11345 and 11347 of this title. See sections 11327 and 14303 of this title.

Section 11361, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1441; Pub. L. 97-449, §5(g)(9), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98-216, §2(17), Feb. 14, 1984, 98 Stat. 5, related to exclusive authority of Interstate Commerce Commission over financial structure of carriers.

Section 11362, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1441, related to criteria for approval and authority to make changes in carrier financial structure.

Section 11363, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1442, related to assent of holders of securities and certain other instruments to changes in carrier financial structure.

Section 11364, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1443, related to procedure for obtaining assents of security holders to changes in financial structure.

Section 11365, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1443, related to effect of change in financial structure of carrier on other persons.

Section 11366, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1443, related to reports by carriers making change in financial structure.

Section 11367, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1444; Pub. L. 98-216, §2(18), (19), Feb. 14, 1984, 98 Stat. 5, related to application of certain other laws to proposed changes in financial structure of carriers.

## CHAPTER 115—FEDERAL-STATE RELATIONS

Sec.

11501. Tax discrimination against rail transportation property.  
11502. Withholding State and local income tax by rail carriers.

### § 11501. Tax discrimination against rail transportation property

(a) In this section—

(1) the term “assessment” means valuation for a property tax levied by a taxing district;

(2) the term “assessment jurisdiction” means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(3) the term “rail transportation property” means property, as defined by the Board, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Board under this part; and

(4) the term “commercial and industrial property” means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax

rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 843.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11503 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11501, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1444; Pub. L. 96-448, title II, §214(a)-(c)(1), Oct. 14, 1980, 94 Stat. 1913, 1915; Pub. L. 97-261, §17(a), Sept. 20, 1982, 96 Stat. 1117; Pub. L. 99-521, §11(a), Oct. 22, 1986, 100 Stat. 2997; Pub. L. 103-272, §4(j)(34), July 5, 1994, 108 Stat. 1370; Pub. L. 103-305, title VI, §601(c), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103-311, title II, §211(b)(2), Aug. 26, 1994, 108 Stat. 1689, related to Interstate Commerce Commission authority over intrastate transportation, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 14501 of this title.

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

### § 11502. Withholding State and local income tax by rail carriers

(a) No part of the compensation paid by a rail carrier providing transportation subject to the

jurisdiction of the Board under this part to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

(b) A rail carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 844.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11504 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11502 to 11507 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11502, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1445, related to conferences and joint hearings with State authorities.

Section 11503, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1445, related to tax discrimination against rail transportation property. See section 11501 of this title.

Section 11503a, added Pub. L. 96-296, §31(a)(1), July 1, 1980, 94 Stat. 823; amended Pub. L. 97-261, §20, Sept. 20, 1982, 96 Stat. 1122, related to tax discrimination against motor carrier transportation property. See section 14502 of this title.

Section 11504, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1446; Pub. L. 97-261, §29(d), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 101-322, §7, July 6, 1990, 104 Stat. 296; Pub. L. 103-272, §5(m)(33), July 5, 1994, 108 Stat. 1378, related to withholding State and local income tax by certain carriers. See sections 11502 and 14503 of this title.

Section 11505, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1448; Pub. L. 99-521, §11(b), Oct. 22, 1986, 100 Stat. 2998, related to State action to enjoin rail carriers from certain actions.

Section 11506, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1448; Pub. L. 102-240, title IV, §4005, Dec. 18, 1991, 105 Stat. 2146, related to registration of motor carriers by a State.

Section 11507, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1449; Pub. L. 98-473, title II, §233, Oct. 12, 1984, 98 Stat. 2031, related to prison-made property governed by State law.

### CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec.	
11701.	General authority.
11702.	Enforcement by the Board.
11703.	Enforcement by the Attorney General.
11704.	Rights and remedies of persons injured by rail carriers.
11705.	Limitation on actions by and against rail carriers.
11706.	Liability of rail carriers under receipts and bills of lading.
11707.	Liability when property is delivered in violation of routing instructions.
11708.	Voluntary arbitration of certain rail rates and practice disputes. <sup>1</sup>

#### AMENDMENTS

2015—Pub. L. 114-110, §13(b), Dec. 18, 2015, 129 Stat. 2237, added item 11708.

#### § 11701. General authority

(a) Except as otherwise provided in this part, the Board may begin an investigation under this

part on the Board's own initiative or upon receiving a complaint pursuant to subsection (b). If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part. If the Board finds a violation of this part in a proceeding brought on its own initiative, any remedy from such proceeding may only be applied prospectively.

(b) A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.

(c) A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.

(d) In any investigation commenced on the Board's own initiative, the Board shall—

(1) not later than 30 days after initiating the investigation, provide written notice to the parties under investigation, which shall state the basis for such investigation;

(2) only investigate issues that are of national or regional significance;

(3) permit the parties under investigation to file a written statement describing any or all facts and circumstances concerning a matter which may be the subject of such investigation;

(4) make available to the parties under investigation and Board members—

(A) any recommendations made as a result of the investigation; and

(B) a summary of the findings that support such recommendations;

(5) to the extent practicable, separate the investigative and decisionmaking functions of staff;

(6) dismiss any investigation that is not concluded by the Board with administrative finality within 1 year after the date on which it was commenced; and

(7) not later than 90 days after receiving the recommendations and summary of findings under paragraph (4)—

(A) dismiss the investigation if no further action is warranted; or

(B) initiate a proceeding to determine if a provision under this part has been violated.

(e)(1) Any parties to an investigation against whom a violation is found as a result of an investigation begun on the Board's own initiative may, not later than 60 days after the date of the order of the Board finding such a violation, institute an action in the United States court of appeals for the appropriate judicial circuit for de novo review of such order in accordance with chapter 7 of title 5.

<sup>1</sup> So in original. Does not conform to section catchline.

(2) The court—

(A) shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Board; and

(B) may remand the proceeding to the Board for such further action as the court may direct.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 845; amended Pub. L. 114-110, §12(a), (b), Dec. 18, 2015, 129 Stat. 2234.)

#### PRIOR PROVISIONS

A prior section 11701, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1449; Pub. L. 96-296, §26(a), July 1, 1980, 94 Stat. 818; Pub. L. 98-554, title II, §226(c)(4), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 99-521, §12(a), Oct. 22, 1986, 100 Stat. 2998; Pub. L. 100-690, title IX, §9111(i), Nov. 18, 1988, 102 Stat. 4534; Pub. L. 103-272, §5(m)(34), July 5, 1994, 108 Stat. 1378, related to general authority of Interstate Commerce Commission to enforce this subtitle, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11701, 14701, and 15901 of this title.

#### AMENDMENTS

2015—Subsec. (a). Pub. L. 114-110, §12(a), substituted “on the Board’s own initiative or upon receiving a complaint pursuant to subsection (b)” for “only on complaint” and inserted at end “If the Board finds a violation of this part in a proceeding brought on its own initiative, any remedy from such proceeding may only be applied prospectively.”

Subsecs. (d), (e). Pub. L. 114-110, §12(b), added subsecs. (d) and (e).

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

#### RULEMAKINGS FOR INVESTIGATIONS OF THE BOARD’S INITIATIVE

Pub. L. 114-110, §12(c), Dec. 18, 2015, 129 Stat. 2235, provided that: “Not later than 1 year after the date of the enactment of this Act [Dec. 18, 2015], the Board shall issue rules, after notice and comment rulemaking, for investigations commenced on its own initiative that—

“(1) comply with the requirements of section 11701(d) of title 49, United States Code, as added by subsection (b);

“(2) satisfy due process requirements; and

“(3) take into account ex parte constraints.”

#### § 11702. Enforcement by the Board

The Board may bring a civil action—

(1) to enjoin a rail carrier from violating sections 10901 through 10906 of this title, or a regulation prescribed or order or certificate issued under any of those sections;

(2) to enforce subchapter II of chapter 113 of this title and to compel compliance with an order of the Board under that subchapter; and

(3) to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 845.)

#### PRIOR PROVISIONS

A prior section 11702, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1450; Pub. L. 96-296, §§15(c), 16(c), July 1, 1980, 94 Stat. 809, 810; Pub. L. 97-261, §25(e), Sept. 20, 1982, 96

Stat. 1125; Pub. L. 98-554, title II, §226(c)(5), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 100-690, title IX, §9111(j), Nov. 18, 1988, 102 Stat. 4534, related to authority of Interstate Commerce Commission to bring a civil action to enforce various provisions of this subtitle, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11702, 14702, and 15902 of this title.

#### § 11703. Enforcement by the Attorney General

(a) The Attorney General may, and on request of the Board shall, bring court proceedings to enforce this part, or a regulation or order of the Board or certificate issued under this part, and to prosecute a person violating this part or a regulation or order of the Board or certificate issued under this part.

(b) The United States Government may bring a civil action on behalf of a person to compel a rail carrier providing transportation subject to the jurisdiction of the Board under this part to provide that transportation to that person in compliance with this part at the same rate charged, or on conditions as favorable as those given by the rail carrier, for like traffic under similar conditions to another person.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 845.)

#### PRIOR PROVISIONS

A prior section 11703, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1450, related to authority of Attorney General and United States Government to bring civil actions to enforce this subtitle, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11703, 14703, and 15903 of this title.

#### § 11704. Rights and remedies of persons injured by rail carriers

(a) A person injured because a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part does not obey an order of the Board, except an order for the payment of money, may bring a civil action in a United States District Court to enforce that order under this subsection.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part. A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable to a person for amounts charged that exceed the applicable rate for the transportation.

(c)(1) A person may file a complaint with the Board under section 11701(b) of this title or bring a civil action under subsection (b) of this section to enforce liability against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(2) When the Board makes an award under subsection (b) of this section, the Board shall order the rail carrier to pay the amount awarded by a specific date. The Board may order a rail carrier providing transportation subject to the jurisdiction of the Board under this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the rail carrier does not pay

the amount awarded by the date payment was ordered to be made.

(d)(1) When a person begins a civil action under subsection (b) of this section to enforce an order of the Board requiring the payment of damages by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the text of the order of the Board must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district—

(A) in which the plaintiff resides;

(B) in which the principal operating office of the rail carrier is located; or

(C) through which the railroad line of that carrier runs.

In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the rail carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(3) The district court shall award a reasonable attorney's fee as a part of the damages for which a rail carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 846.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11705 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11704, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1451, related to actions by private persons to enjoin abandonment of service, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

#### § 11705. Limitation on actions by and against rail carriers

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

(b) A person must begin a civil action to recover overcharges under section 11704(b) of this title within 3 years after the claim accrues, whether or not a complaint is filed under section 11704(c)(1).

(c) A person must file a complaint with the Board to recover damages under section 11704(b) of this title within 2 years after the claim accrues.

(d) The limitation period under subsection (b) of this section is extended for 6 months from the time written notice is given to the claimant by the rail carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the rail carrier within that limitation period. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the rail carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) A person must begin a civil action to enforce an order of the Board against a rail carrier for the payment of money within one year after the date the order required the money to be paid.

(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

(1) payment of the rate for the transportation or service involved;

(2) subsequent refund for overpayment of that rate; or

(3) deduction made under section 3726 of title 31, whichever is later.

(g) A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the rail carrier.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 847.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11705, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1451; Pub. L. 99-521, §12(b), Oct. 22, 1986, 100 Stat. 2998, related to rights and remedies of persons injured by certain carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11704, 14704, and 15904 of this title.

#### § 11706. Liability of rail carriers under receipts and bills of lading

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That rail carrier and any other carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Board under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by—

(1) the receiving rail carrier;

(2) the delivering rail carrier; or

(3) another rail carrier over whose line or route the property is transported in the

United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading.

Failure to issue a receipt or bill of lading does not affect the liability of a rail carrier. A delivering rail carrier is deemed to be the rail carrier performing the line-haul transportation nearest the destination but does not include a rail carrier providing only a switching service at the destination.

(b) The rail carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the rail carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c)(1) A rail carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, or rule in violation of this section is void.

(2) A rail carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on trains carrying passengers.

(3) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish rates for transportation of property under which—

(A) the liability of the rail carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier; or

(B) specified amounts are deducted, pursuant to a written agreement between the shipper and the carrier, from any claim against the carrier with respect to the transportation of such property.

(d)(1) A civil action under this section may be brought in a district court of the United States or in a State court.

(2)(A) A civil action under this section may only be brought—

(i) against the originating rail carrier, in the judicial district in which the point of origin is located;

(ii) against the delivering rail carrier, in the judicial district in which the principal place of business of the person bringing the action is located if the delivering carrier operates a railroad or a route through such judicial district, or in the judicial district in which the point of destination is located; and

(iii) against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(B) In this section, “judicial district” means (i) in the case of a United States district court, a judicial district of the United States, and (ii) in the case of a State court, the applicable geo-

graphic area over which such court exercises jurisdiction.

(e) A rail carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(2) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 847.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11707 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11706, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1452; Pub. L. 97-258, §3(n), Sept. 13, 1982, 96 Stat. 1066; Pub. L. 99-521, §12(c), Oct. 22, 1986, 100 Stat. 2998; Pub. L. 103-180, §3, Dec. 3, 1993, 107 Stat. 2049; Pub. L. 103-429, §6(18), Oct. 31, 1994, 108 Stat. 4379, related to limitation on actions by and against common carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11705, 14705, and 15905 of this title.

#### § 11707. Liability when property is delivered in violation of routing instructions

(a)(1) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part diverts or delivers property to another rail carrier in violation of routing instructions in the bill of lading, both of those rail carriers are jointly and severally liable to the rail carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.

(2) A rail carrier is not liable under paragraph (1) of this subsection when it diverts or delivers property in compliance with an order or regulation of the Board.

(3) A rail carrier to whom property is transported is not liable under this subsection if it shows that it had no notice of the routing instructions before transporting the property. The burden of proving lack of notice is on that rail carrier.

(b) The court shall award a reasonable attorney’s fee to the plaintiff in a judgment against the defendant rail carrier under subsection (a) of this section. The court shall tax and collect that fee as a part of the costs of the action.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 849.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11710 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11707 to 11712 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11707, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1453; Pub. L. 96-258, §1(14), June 3, 1980, 94 Stat. 427; Pub. L. 96-296, §26(b), July 1, 1980, 94 Stat. 818; Pub. L. 96-448, title II, §211(c), Oct. 14, 1980, 94 Stat. 1911; Pub. L. 99-521, §12(d), Oct. 22, 1986, 100 Stat. 2998; Pub. L. 100-690, title IX, §9114, Nov. 18, 1988, 102 Stat. 4535, related to liability of common carriers under receipts and bills of lading. See sections 11706, 14706, and 15906 of this title.

Section 11708, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1454; Pub. L. 99-521, §12(e)(1), (2), Oct. 22, 1986, 100 Stat. 2998, related to private enforcement of motor carrier and household goods freight forwarder licensing requirements. See section 14707 of this title.

Section 11709, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1454, related to liability for issuance of securities by certain carriers.

Section 11710, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1455, related to liability when property is delivered in violation of routing instructions. See section 11707 of this title.

Section 11711, added Pub. L. 96-454, §7(a)(1), Oct. 15, 1980, 94 Stat. 2016; amended Pub. L. 97-261, §6(d)(2), Sept. 20, 1982, 96 Stat. 1107, related to dispute settlement program for household goods carriers. See section 14708 of this title.

Section 11712, added Pub. L. 103-180, §4(a), Dec. 3, 1993, 107 Stat. 2049, related to tariff reconciliation rules for motor common carriers of property. See section 14709 of this title.

### § 11708. Voluntary arbitration of certain rail rates and practices disputes

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of the Surface Transportation Board Reauthorization Act of 2015, the Board shall promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints subject to the jurisdiction of the Board.

(b) COVERED DISPUTES.—The voluntary and binding arbitration process established pursuant to subsection (a)—

(1) shall apply to disputes involving—

(A) rates, demurrage, accessorial charges, misrouting, or mishandling of rail cars; or

(B) a carrier's published rules and practices as applied to particular rail transportation;

(2) shall not apply to disputes—

(A) to obtain the grant, denial, stay, or revocation of any license, authorization, or exemption;

(B) to prescribe for the future any conduct, rules, or results of general, industry-wide applicability;

(C) to enforce a labor protective condition; or

(D) that are solely between 2 or more rail carriers; and

(3) shall not prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes the parties may have.

(c) ARBITRATION PROCEDURES.—

(1) IN GENERAL.—The Board—

(A) may make the voluntary and binding arbitration process established pursuant to subsection (a) available only to the relevant parties;

(B) may make the voluntary and binding arbitration process available only—

(i) after receiving the written consent to arbitrate from all relevant parties; and

(ii)(I) after the filing of a written complaint; or

(II) through other procedures adopted by the Board in a rulemaking proceeding;

(C) with respect to rate disputes, may make the voluntary and binding arbitration process available only to the relevant parties if the rail carrier has market dominance (as determined under section 10707); and

(D) may initiate the voluntary and binding arbitration process not later than 40 days after the date on which a written complaint is filed or through other procedures adopted by the Board in a rulemaking proceeding.

(2) LIMITATION.—Initiation of the voluntary and binding arbitration process shall preclude the Board from separately reviewing a complaint or dispute related to the same rail rate or practice in a covered dispute involving the same parties.

(3) RATES.—In resolving a covered dispute involving the reasonableness of a rail carrier's rates, the arbitrator or panel of arbitrators, as applicable, shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues (as determined under section 10704(a)(2)).

(d) ARBITRATION DECISIONS.—Any decision reached in an arbitration process under this section—

(1) shall be consistent with sound principles of rail regulation economics;

(2) shall be in writing;

(3) shall contain findings of fact and conclusions;

(4) shall be binding upon the parties; and

(5) shall not have any precedential effect in any other or subsequent arbitration dispute.

(e) TIMELINES.—

(1) SELECTION.—An arbitrator or panel of arbitrators shall be selected not later than 14 days after the date of the Board's decision to initiate arbitration.

(2) EVIDENTIARY PROCESS.—The evidentiary process of the voluntary and binding arbitration process shall be completed not later than 90 days after the date on which the arbitration process is initiated unless—

(A) a party requests an extension; and

(B) the arbitrator or panel of arbitrators, as applicable, grants such extension request.

(3) DECISION.—The arbitrator or panel of arbitrators, as applicable, shall issue a decision not later than 30 days after the date on which the evidentiary record is closed.

(4) EXTENSIONS.—The Board may extend any of the timelines under this subsection upon the agreement of all parties in the dispute.

(f) ARBITRATORS.—

(1) **IN GENERAL.**—Unless otherwise agreed by all of the parties, an arbitration under this section shall be conducted by an arbitrator or panel of arbitrators, which shall be selected from a roster, maintained by the Board, of persons with rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector.

(2) **INDEPENDENCE.**—In an arbitration under this section, the arbitrators shall perform their duties with diligence, good faith, and in a manner consistent with the requirements of impartiality and independence.

(3) **SELECTION.**—

(A) **IN GENERAL.**—If the parties cannot mutually agree on an arbitrator, or the lead arbitrator of a panel of arbitrators, the parties shall select the arbitrator or lead arbitrator from the roster by alternately striking names from the roster until only 1 name remains meeting the criteria set forth in paragraph (1).

(B) **PANEL OF ARBITRATORS.**—If the parties agree to select a panel of arbitrators, instead of a single arbitrator, the panel shall be selected under this subsection as follows:

(i) The parties to a dispute may mutually select 1 arbitrator from the roster to serve as the lead arbitrator of the panel of arbitrators.

(ii) If the parties cannot mutually agree on a lead arbitrator, the parties shall select a lead arbitrator using the process described in subparagraph (A).

(iii) In addition to the lead arbitrator selected under this subparagraph, each party to a dispute shall select 1 additional arbitrator from the roster, regardless of whether the other party struck out the arbitrator's name under subparagraph (A).

(4) **COST.**—The parties shall share the costs incurred by the Board and arbitrators equally, with each party responsible for paying its own legal and other associated arbitration costs.

(g) **RELIEF.**—

(1) **IN GENERAL.**—Subject to the limitations set forth in paragraphs (2) and (3), an arbitral decision under this section may award the payment of damages or rate prescriptive relief.

(2) **PRACTICE DISPUTES.**—The damage award for practice disputes may not exceed \$2,000,000.

(3) **RATE DISPUTES.**—

(A) **MONETARY LIMIT.**—The damage award for rate disputes, including any rate prescription, may not exceed \$25,000,000.

(B) **TIME LIMIT.**—Any rate prescription shall be limited to not longer than 5 years from the date of the arbitral decision.

(h) **BOARD REVIEW.**—If a party appeals a decision under this section to the Board, the Board may review the decision under this section to determine if—

(1) the decision is consistent with sound principles of rail regulation economics;

(2) a clear abuse of arbitral authority or discretion occurred;

(3) the decision directly contravenes statutory authority; or

(4) the award limitation under subsection (g) was violated.

(Added Pub. L. 114-110, §13(a), Dec. 18, 2015, 129 Stat. 2235.)

#### REFERENCES IN TEXT

The date of the enactment of the Surface Transportation Board Reauthorization Act of 2015, referred to in subsec. (a), is the date of enactment of Pub. L. 114-110, which was approved Dec. 18, 2015.

### CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

Sec.	
11901.	General civil penalties.
11902.	Interference with railroad car supply.
11903.	Record keeping and reporting violations.
11904.	Unlawful disclosure of information.
11905.	Disobedience to subpoenas.
11906.	General criminal penalty when specific penalty not provided.
11907.	Punishment of corporation for violations committed by certain individuals.
11908.	Relation to other Federal criminal penalties.

#### § 11901. General civil penalties

(a) Except as otherwise provided in this section, a rail carrier providing transportation subject to the jurisdiction of the Board under this part, an officer or agent of that rail carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, or a receiver or trustee of that rail carrier, violating a regulation or order of the Board under section 11124(a)(2) or (b) of this title is liable to the United States Government for a civil penalty of \$500 for each violation and for \$25 for each day the violation continues.

(c) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title or of a requirement or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than \$5,000.

(d) A rail carrier, receiver, or operating trustee violating an order or direction of the Board under section 11123 or 11124(a)(1) of this title is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation and for \$50 for each day the violation continues.

(e)(1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Board a record concerning transportation subject to the jurisdiction of the Board under this part that does not make, prepare, preserve, or submit that record as required under that subchapter, is liable to the United States Government for a civil penalty of \$500 for each violation.

(2) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, and a lessor, receiver, or trustee of that

rail carrier, violating section 11144(b)(1) of this title, is liable to the United States Government for a civil penalty of \$100 for each violation.

(3) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that rail carrier, a person furnishing cars, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States Government for a civil penalty of \$100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(f) Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 849.)

#### PRIOR PROVISIONS

A prior section 11901, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1455; Pub. L. 96-454, §8(a), Oct. 15, 1980, 94 Stat. 2019; Pub. L. 96-510, title III, §306(c), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 97-261, §23, Sept. 20, 1982, 96 Stat. 1124; Pub. L. 98-554, title II, §§226(c)(6), 227(a)(1), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103-180, §§6(b), 7(c), Dec. 3, 1993, 107 Stat. 2051, 2052, related to general civil penalties, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 11901, 14901, and 16101 of this title.

#### EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

### § 11902. Interference with railroad car supply

(a) A person that offers or gives anything of value to another person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board under this part intending to influence an action of that other person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of that other person, shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

(b) A person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board under this part that solicits, accepts, or receives anything of value—

- (1) intending to be influenced by it in an action of that person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property; or
- (2) because of the action of that person,

shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 850.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11907 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11902 and 11902a were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 11902, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1457, related to civil penalties for accepting rebates from common carriers. See section 14902 of this title.

Section 11902a, added Pub. L. 96-296, §15(b)(1), July 1, 1980, 94 Stat. 809, related to penalties for violations of rules relating to loading and unloading motor vehicles. See section 14905 of this title.

### § 11903. Record keeping and reporting violations

A person required to make a report to the Board, or make, prepare, or preserve a record, under subchapter III of chapter 111 of this title about transportation subject to the jurisdiction of the Board under this part that knowingly and willfully—

- (1) makes a false entry in the report or record;
- (2) destroys, mutilates, changes, or by another means falsifies the record;
- (3) does not enter business related facts and transactions in the record;
- (4) makes, prepares, or preserves the record in violation of a regulation or order of the Board; or
- (5) files a false report or record with the Board,

shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 851.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11909 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11903, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1457, related to rate, discrimination, and tariff violations, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 14903 of this title.

### § 11904. Unlawful disclosure of information

(a) A—

(1) rail carrier providing transportation subject to the jurisdiction of the Board under this part, or an officer, agent, or employee of that rail carrier, or another person authorized to receive information from that rail carrier, that knowingly discloses to another person, except the shipper or consignee; or

(2) person who solicits or knowingly receives,

information described in subsection (b) without the consent of the shipper or consignee shall be fined not more than \$1,000.

(b) The information referred to in subsection (a) is information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation provided under this part, or information about the contents of a contract authorized under section 10709 of this title, that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.

(c) This part does not prevent a rail carrier providing transportation subject to the jurisdiction

tion of the Board under this part from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another rail carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(d) An employee of the Board delegated to make an inspection or examination under section 11144 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined not more than \$500, imprisoned for not more than 6 months, or both.

(e) A person that knowingly discloses confidential data made available to such person under section 11163 of this title by a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall be fined not more than \$50,000.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 851; amended Pub. L. 105-102, §2(6), Nov. 20, 1997, 111 Stat. 2204.)

#### HISTORICAL AND REVISION NOTES

##### PUB. L. 105-102

This amends 49:11904(a)(2) to correct a grammatical error.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11910 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11904, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1457; Pub. L. 99-521, §13(a), Oct. 22, 1986, 100 Stat. 2998, related to additional rate and discrimination violations, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 14904 of this title.

#### AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105-102 struck out “a” before “person”.

### § 11905. Disobedience to subpoenas

A person not obeying a subpoena or requirement of the Board to appear and testify or produce records shall be fined at least \$100 but not more than \$5,000, imprisoned for not more than one year, or both.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 852.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11913 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11905, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1459; Pub. L. 97-261, §29(e), Sept. 20, 1982, 96 Stat. 1128, related to transportation of passengers without charge, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### § 11906. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a rail carrier providing

transportation subject to the jurisdiction of the Board under this part, and when that rail carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined not more than \$5,000. The person may be imprisoned for not more than 2 years in addition to being fined under this section. A separate violation occurs each day a violation of this part continues.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 852; amended Pub. L. 105-102, §2(7), Nov. 20, 1997, 111 Stat. 2204.)

#### HISTORICAL AND REVISION NOTES

##### PUB. L. 105-102

This amends 49:11906 to correct an erroneous cross-reference.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11906, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1459, related to evasion of regulation of motor carriers and brokers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 14906 of this title.

#### AMENDMENTS

1997—Pub. L. 105-102 substituted “violation of this part” for “violation of this title”.

### § 11907. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that rail carrier are considered to be the actions and omissions of that rail carrier as well as that individual.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 852.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11915 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11907, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1459, related to interference with railroad car supply, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 11902 of this title.

### § 11908. Relation to other Federal criminal penalties

Notwithstanding section 3571 of title 18, United States Code, the criminal penalties provided for in this chapter are the exclusive criminal penalties for violations of this part.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 852.)

## PRIOR PROVISIONS

Prior sections 11908 to 11917 were omitted in the general amendment of this subtitle by Pub. L. 104-88, § 102(a).

Section 11908, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1459; Pub. L. 99-521, § 13(b)(1), (2), Oct. 22, 1986, 100 Stat. 2998, 2999, related to penalty for abandonment of service by household goods freight forwarders.

Section 11909, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1460; Pub. L. 96-258, § 1(15), June 3, 1980, 94 Stat. 427; Pub. L. 97-424, title IV, § 427(a), Jan. 6, 1983, 96 Stat. 2168; Pub. L. 98-216, § 2(20), Feb. 14, 1984, 98 Stat. 6; Pub. L. 99-521, § 13(c), Oct. 22, 1986, 100 Stat. 2999; Pub. L. 103-180, § 6(c), Dec. 3, 1993, 107 Stat. 2051; Pub. L. 103-272, § 4(j)(35), July 5, 1994, 108 Stat. 1370, related to penalties for record keeping and reporting violations. See sections 11903, 14907, and 16102 of this title.

Section 11910, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1461; Pub. L. 96-448, title III, § 303(b), Oct. 14, 1980, 94 Stat. 1938; Pub. L. 99-521, § 13(d), Oct. 22, 1986, 100 Stat. 2999, related to penalties for unlawful disclosure of information. See sections 11904, 14908, and 16103 of this title.

Section 11911, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1462; Pub. L. 97-261, § 19(c), Sept. 20, 1982, 96 Stat. 1121, related to penalties for violations involving issuance of securities, disposition of funds, and restrictions on ownership.

Section 11912, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1462; Pub. L. 96-258, § 1(13)(C), June 3, 1980, 94 Stat. 427, related to penalties for violations by persons, not carriers, involving consolidations, mergers, and acquisitions of control.

Section 11913, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1463, related to penalty for disobedience to subpoenas. See sections 11905, 14909, and 16104 of this title.

Section 11913a, added Pub. L. 96-448, title III, § 303(a)(1), Oct. 14, 1980, 94 Stat. 1938, related to penalty for accounting principles violations.

Section 11914, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1463; Pub. L. 96-258, § 1(16), June 3, 1980, 94 Stat. 427; Pub. L. 97-424, title IV, § 427(b), Jan. 6, 1983, 96 Stat. 2168; Pub. L. 98-216, § 2(20), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-554, title II, § 226(c)(7), Oct. 30, 1984, 98 Stat. 2852, related to general criminal penalty when specific penalty not provided. See sections 11906, 14910, and 16105 of this title.

Section 11915, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1464, related to punishment of corporation for violations committed by certain individuals. See sections 11907, 14911, and 16106 of this title.

Section 11916, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1464, related to conclusiveness of rates in certain prosecutions. See section 14913 of this title.

Section 11917, added Pub. L. 96-454, § 9(a), Oct. 15, 1980, 94 Stat. 2021, related to weight-bumping in household goods transportation. See section 14912 of this title.

## PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

## AMENDMENTS

1996—Pub. L. 104-287, § 5(26)(A), Oct. 11, 1996, 110 Stat. 3390, made technical amendment to part heading.

### CHAPTER 131—GENERAL PROVISIONS

Sec.	
13101.	Transportation policy.
13102.	Definitions.
13103.	Remedies as cumulative.

## AMENDMENTS

1996—Pub. L. 104-287, § 5(26)(B), Oct. 11, 1996, 110 Stat. 3390, made technical amendment to heading.

#### § 13101. Transportation policy

(a) IN GENERAL.—To ensure the development, coordination, and preservation of a transpor-

tation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

(G) provide and maintain service to small communities and small shippers and intrastate bus services;

(H) provide and maintain commuter bus operations;

(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;

(J) promote greater participation by minorities in the motor carrier system;

(K) promote intermodal transportation;

(3) in overseeing transportation by motor carrier of passengers—

(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;

(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and

(C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and

(4) in overseeing transportation by water carrier, to encourage and promote service and