

(c)(1) In this subsection—

(A) the term “local governmental authority”—

(i) has the same meaning given that term by section 5302(a)¹ 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 “mass transportation” means transportation services described in section 5302(a)¹ 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) mass 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.)

REFERENCES IN TEXT

Section 5302 of this title, referred to in subsec. (c)(1)(A)(i), (B), was amended generally by Pub. L. 112-141, div. B, §20004, July 6, 2012, 126 Stat. 623, and, as so amended, no longer contains a subsec. (a) or a definition of “mass transportation”. However, the term “local governmental authority” is defined elsewhere in that section.

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

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

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 701 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 701 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.

¹ See References in Text note below.

(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, related 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. 1128, 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, §9111(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

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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, 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.

(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.)

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

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 701 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 701 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—