

(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.

(h)(1) Any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwood or paper) involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier’s owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC).

(2) The Board may, on request of a rail carrier or other party or on its own initiative, grant such relief from the limitations of paragraph (1) of this subsection as the Board considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier’s ability to meet its common carrier obligations under section 11101 of this title.

(3)(A) This subsection shall cease to be effective after September 30, 1998.

(B) Before October 1, 1997, the National Grain Car Council and the Railroad-Shipper Transpor-

tation Advisory Council shall make recommendations to Congress on whether to extend the effectiveness of or otherwise modify this subsection.

(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.)

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

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-