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TITLE 49--TRANSPORTATION

SUBTITLE IV--INTERSTATE TRANSPORTATION

PART A--RAIL

CHAPTER 105--JURISDICTION

Sec. 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, Sec. 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, Sec. 102(a).

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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, Sec. 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, Sec. 4(b)(4), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 103-272, Sec. 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, Sec. 213, Oct. 14, 1980, 94 Stat. 1912; Pub. L. 103-311, title II, Sec. 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, Sec. 31(b), July 1, 1980, 94 Stat. 824; Pub. L. 97-261, Sec. 6(f), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99-521, Sec. 6(a), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-305, title VI, Sec. 601(b)(2)(C), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103-311, title II, Sec. 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, Sec. 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, Sec. 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, Sec. 1(4), June 3, 1980, 94 Stat. 425; Pub. L. 97-261, Sec. 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, Sec. 1(5), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, Sec. Sec. 7, 21(a), 24(a), July 1, 1980, 94 Stat. 797, 812, 814; Pub. L. 96-454, Sec. 11(a), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 97-261, Sec. 14(d), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 97-377, Sec. 152, Dec. 21, 1982, 96 Stat. 1918; Pub. L. 97-449, Sec. 5(g)(1), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 98-216, Sec. 2(8), Feb. 14, 1984, 98 Stat. 5; Pub. L. 98-554, title II, Sec. 227(c), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103-272, Sec. 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, Sec. 16(a), July 1, 1980, 94 Stat. 810; amended Pub. L. 103-272, Sec. 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, Sec. 21(b)(1), July 1, 1980, 94 Stat. 812; amended Pub. L. 96-454, Sec. 11(b), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 103-272, Sec. 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, Sec. 24(b)(1), July 1, 1980, 94 Stat. 814; amended Pub. L. 103-272, Sec. 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, Sec. 226(a)(1), Oct. 30, 1984, 98 Stat. 2848; amended Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title IX, Sec. 9111(a)-(f), Nov. 18, 1988, 102 Stat. 4531-4533; Pub. L. 103-272, Sec. 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, Sec. 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, Sec. 3(b), Aug. 26, 1983, 97 Stat. 599; Pub. L. 98-216, Sec. 2(9), (10), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, Sec. 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, Sec. 1(6), June 3, 1980, 94 Stat. 425; Pub. L. 97-449, Sec. 5(g)(2), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98-216, Sec. 2(11), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, Sec. 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, Sec. 6(c), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-272, Sec. 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, Sec. 5(g)(3), Jan. 12, 1983, 96 Stat. 2443, related to exempt freight forwarder service, prior to repeal by Pub. L. 99-521, Sec. Sec. 6(d)(1), 15, Oct. 22, 1986, 100 Stat. 2994, 2999, effective 60 days after Oct. 22, 1986.

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TITLE 49--TRANSPORTATION

SUBTITLE IV--INTERSTATE TRANSPORTATION

PART A--RAIL

CHAPTER 109--LICENSING

Sec. 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 re

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fusing 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, Sec. 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, Sec. 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, Sec. 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 701 of this title.

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TITLE 49--TRANSPORTATION
SUBTITLE IV--INTERSTATE TRANSPORTATION
PART A--RAIL
CHAPTER 109--LICENSING

Sec. 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, Sec. 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.

TITLE 49--TRANSPORTATION

SUBTITLE IV--INTERSTATE TRANSPORTATION

PART A--RAIL

CHAPTER 113--FINANCE

SUBCHAPTER II--COMBINATIONS

Sec. 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 management, 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, Sec. 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, Sec. 102(a).

A prior section 11323, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1433; Pub. L. 99-521, Sec. 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, Sec. 102(a).