

C

Effective: October 11, 1996

United States Code Annotated [Currentness](#)

Title 49. Transportation ([Refs & Annos](#))

Subtitle IV. Interstate Transportation ([Refs & Annos](#))

Part A. RAIL ([Refs & Annos](#))

▢ [Chapter 107](#). Rates ([Refs & Annos](#))

▢ [Subchapter I](#). General Authority

→→ **§ 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.

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

CREDIT(S)

(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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. [House Report No. 104-311](#) and [House Conference Report No. 104-422](#), see 1995 U.S. Code Cong. and Adm. News, p. 793.

1996 Acts. [House Report No. 104-573](#), see 1996 U.S. Code Cong. and Adm. News, p. 3831.

Amendments

1996 Amendments. Subsec. (e). [Pub.L. 104-287, § 5\(24\)](#), substituted "October 1, 1980," for "the effective date

of the Staggers Rail Act of 1980”.

Effective and Applicability Provisions

1995 Acts. Section 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.

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, and 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, and is now covered by this section.

CROSS REFERENCES

Common carrier service provisions not violated if rail carrier fulfills commitments under contracts authorized under this section before responding to requests for service, see [49 USCA § 11101](#).


Penalties for unlawful disclosure of information about contents of contract authorized under this section, see [49 USCA § 11904](#).

Prohibitions against discrimination by rail carriers inapplicable to contracts described in this section, see

[49 USCA § 10741](#).

LIBRARY REFERENCES

American Digest System

[Carriers](#)  [26 to 31](#).

Key Number System Topic No. [70](#).

Corpus Juris Secundum

[CJS Carriers § 141](#), Rail Contracts.

[CJS Carriers § 142](#), Rail Contracts--Filing Contracts to Transport Agricultural Products.

[CJS Carriers § 224](#), Rail Carrier Contracts.

RESEARCH REFERENCES

ALR Library

[132 ALR 738](#), Assumption of Jurisdiction by Court Before Completion of Administrative Procedure as Ground of Prohibition.

[107 ALR 1446](#), Liability of Carrier to Punitive Damages With Respect to Subject of Interstate Shipment.

[97 ALR 406](#), Right to Maintain Action Against Carrier on Ground that Rates Which Were Filed and Published by Carrier Pursuant to Law Were Excessive.

[22 ALR 1100](#), Power of Federal Government Over Intrastate Rates.

Encyclopedias

[Am. Jur. 2d Carriers § 229](#), Statutory or Constitutional Prohibition of Discrimination--Federal Statutes.

[Am. Jur. 2d Carriers § 240](#), Federal Statutes.

[Am. Jur. 2d Carriers § 262](#), Jurisdiction.

Forms

[Federal Procedural Forms § 56:30](#), Effect of Contract.

[Federal Procedural Forms § 56:31](#), Remedy for Breach.

[Federal Procedural Forms § 56:32](#), Contracts for Transportation of Agricultural Products; Filing of Summary.

[Federal Procedural Forms § 56:33](#), Contracts for Transportation of Agricultural Products; Filing of Summary--Review of Contract; Complaint.

[Federal Procedural Forms § 56:37](#), Contracts for Transportation of Agricultural Products; Filing of Summary--Review of Contract; Complaint--Board Action on Review.

[Federal Procedural Forms § 66:136](#), Complaint--To Suspend Portion of Railroad Tariff Providing for New Line-Haul Freight Rates Challenged as Unreasonably High [[49 U.S.C.A. §§ 10701\(A\)](#), [10704\(A\)\(1\)](#), [10707](#), [10709\(B\)](#)]...

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 67:47](#), Contracts for Transportation of Agricultural Products.

[Federal Procedure, Lawyers Edition § 67:48](#), Review of Proposed Contracts; Complaint Requirement.

[Federal Procedure, Lawyers Edition § 67:54](#), Determination.

[Federal Procedure, Lawyers Edition § 67:55](#), Court Proceedings to Enforce Contracts.

[Federal Procedure, Lawyers Edition § 67:145](#), Contents of Application--Request for Joint Rates and Divisions.

[Federal Procedure, Lawyers Edition § 76:447](#), Contents of Complaint.

[Federal Procedure, Lawyers Edition § 76:685](#), Contracts for Rail Services Approved by Board.

[West's Federal Administrative Practice § 5326](#), Federal Highway Administration--Activities.

[West's Federal Administrative Practice § 5379](#), Substantive Responsibilities--Motor Carriers, Water Carriers, Brokers, and Freight Forwarders.

[West's Federal Administrative Practice § 5399](#), Rules of Practice--Appellate Procedures.

NOTES OF DECISIONS

Bottlenecks 3

[Contractual intent 8](#)
[Contractual party 7](#)
[Jurisdiction 6](#)
[Limitations 5](#)
[Persons entitled to maintain action 4](#)
[Preexisting contracts 2](#)
[State regulation or control 1](#)

1. State regulation or control

Staggers Act did not expressly preempt state regulator of electric companies from taking action that resulted in public access to rail contracts. [Burlington Northern R. Co. v. Public Utility Com'n of Texas, C.A.5 \(Tex.\) 1987, 812 F.2d 231, rehearing denied 816 F.2d 677. States ↪ 18.21](#)

Interstate Commerce Commission Termination Act (ICCTA) preempted rail carrier's breach of contract claim under Massachusetts law, stemming from other carriers' purported failure to pay car hire fees; pertinent car service and car hire agreement did not fall within statutory exception governing purchases of rail carrier services by shippers. [San Luis Central R. Co. v. Springfield Terminal Ry. Co., D.Mass.2005, 369 F.Supp.2d 172. Bailment ↪ 20; States ↪ 18.21](#)

2. Preexisting contracts

Rate contract between a railroad and shipper which predated Staggers Act of 1980, Pub.L. 96-448, Oct. 14, 1980, 94 Stat. 1895, and which contained a proposed increase occurring after effective date of the Act was not per se illegal. [Kansas Power & Light Co. v. Burlington Northern R. Co., C.A.10 \(Kan.\) 1984, 740 F.2d 780, certiorari dismissed 105 S.Ct. 1155, 469 U.S. 1200, 84 L.Ed.2d 308. Carriers ↪ 192](#)

Although Staggers Rail Act of 1980 could be applied to preexisting agreements establishing rates between rail carriers and shippers for rail transportation services that were found to be lawful and in effect on Oct. 1, 1980, it could not be applied to rate dispute which was pending on appeal at time Act was enacted since Congress intended courts to decide whether to apply Act to cases, other than rate bureau proceedings, that were pending as of Oct. 1, 1980. [Cleveland-Cliffs Iron Co. v. I. C. C., C.A.6 1981, 664 F.2d 568. Commerce ↪ 85.12](#)

Even assuming that rail tariff agreements entered into prior to Pub.L. 96-448, Oct. 14, 1980, 94 Stat. 1895 were illegal when made, rail carrier could not raise that illegality as affirmative defense to existence of a contract. [Cleveland-Cliffs Iron Co. v. Chicago & North Western Transp. Co., W.D.Mich.1984, 581 F.Supp. 1144. Carriers ↪ 196](#)

3. Bottlenecks

Surface Transportation Board reasonably interpreted ambiguous provision of Staggers Rail Act of 1980, which barred challenges before Board to rail transportation contract rates, as permitting creation of bottleneck contract exception to general principle requiring railroad rate's reasonableness to be judged on "through" basis; under ex-

ception, shipper could challenge reasonableness of common carriage bottleneck segment rate when carrier for bottleneck segment of route was unable to provide origin-to-destination service and shipper secured separate contract rate for non-bottleneck segment, and Board could compel bottleneck carrier to establish separately challengeable rate to complete transportation. [Union Pacific R. Co. v. Surface Transp. Bd., C.A.D.C.2000, 202 F.3d 337, 340 U.S.App.D.C. 114. Carriers ↪ 12\(11\)](#)

4. Persons entitled to maintain action

Water transport association lacked standing to protest adequacy of Interstate Commerce Commission's [now Surface Transportation Board] public disclosure of information on terms of rail rate contracts, although association, which submitted to ICC a protest to approval of contracts, was a party to proceedings; stake of water carriers in maintaining their competitive position was not within zone of interest Congress sought to protect in Staggers Rail Act. [Water Transport Ass'n v. I.C.C., C.A.D.C.1987, 819 F.2d 1189, 260 U.S.App.D.C. 390. Commerce ↪ 158; Records ↪ 34](#)

Water carriers, unlike shippers and ports, lacked standing to challenge rail transportation contracts before Commission [now Board] on ground that rail-water competition was undermined thereby. [Water Transport Ass'n v. I.C.C., C.A.2 1983, 722 F.2d 1025. Commerce ↪ 102](#)

5. Limitations


One-year statute of limitations contained in Rules Circular, not two-year statute of limitations under Interstate Commerce Act, applied to shipper's claim against railroad for missing goods; shipper and railroad entered into their own contract, and thus, shipments were free from oversight of Surface Transportation Board. [Glenn Hunter & Associates, Inc. v. Union Pacific R. Co., C.A.6 \(Ohio\) 2005, 135 Fed.Appx. 849, 2005 WL 1432742, Unreported, rehearing en banc denied. Carriers ↪ 160](#)

6. Jurisdiction


Jurisdiction-limiting language of the Staggers Act, which allowed rail carriers to enter into private contractual arrangements with shippers and stated that the statute did not confer original jurisdiction on federal courts, did not apply to rail carrier's potato shipments, and thus the Staggers Act did not deprive district court of jurisdiction over shippers' various claims against rail carrier arising from mishandling of the potato shipments; shipments were authorized under statutory exemption provision, jurisdiction provision of Staggers Act did not apply to exempt shipments, and nothing in transportation documents stated that the shipments were under Staggers Act. [Schoenmann Produce Co. v. Burlington Northern and Santa Fe Ry. Co., S.D.Tex.2006, 420 F.Supp.2d 757. Federal Courts ↪ 199](#)

The Staggers Act empowered district court to grant injunctive relief to enforce lawful rate contract formed before effective date of the Act, and Commission [now Board] no longer had exclusive jurisdiction over rate suspensions. [Cleveland-Cliffs Iron Co. v. Chicago & N. W. Transp. Co., W.D.Mich.1981, 516 F.Supp. 399, affirmed 701 F.2d 175. Commerce ↪ 89\(7.1\)](#)

7. Contractual party

Sea waybill offered by maritime transport corporation to shipper did not limit corporation's liability under Interstate Commerce Act (ICA) statute providing defenses for a carrier to limit its liability for damages to shipment, where shipper was not a party to contract between corporation and subcontractor railroad company, corporation failed to disclose existence of subcontract, much less the terms of exempt rail transportation agreement (ERTA) between corporation and subcontractor and the exempt circular master intermodal transportation agreement (MITA 2-A) it incorporated, but rather stated existence of subcontract in merely hypothetical terms. [Mitsui Sumitomo Ins. Co., Ltd. v. Evergreen Marine Corp., S.D.N.Y.2008, 578 F.Supp.2d 575, reversed 621 F.3d 215, on remand 2010 WL 5480755. Shipping](#)  140(2)

8. Contractual intent

Evidence indicated that rail carriers and manufacturer intended their rail transportation agreement for transportation of power generation equipment to be a contract under statute permitting rail carriers and purchasers of rail services to enter into private contracts for specified services under specified rates and conditions, rather than a common carrier transportation agreement under Interstate Commerce Act (ICA); parties' agreement was for rail services on specified route, and terms and rates of agreement were confidential, a deviation from ICA's requirement that common carrier agreements publish service terms and rates. [Babcock & Wilcox Co. v. Kansas City Southern Ry. Co., C.A.3 \(N.J.\) 2009, 557 F.3d 134. Carriers](#)  63

49 U.S.C.A. § 10709, 49 USCA § 10709

Current through P.L. 112-283 approved 1-15-13

Westlaw. (C) 2013 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

END OF DOCUMENT