

uity 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) Within 9 months after January 1, 1996, the Board shall establish procedures to ensure 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.

(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.)

#### 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

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