Pub. L. 96–296, § 14(a), (c), (d), July 1, 1980, 94 Stat. 803, 808; Pub. L. 96–448, title II, § 219(a)–(e), 224(b), Oct. 14, 1980, 94 Stat. 1926–1929; Pub. L. 97–261, § 10(a)–(d), Sept. 20, 1982, 96 Stat. 1109, 1110; Pub. L. 98–216, § 2(12), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99–521, § 7(c), Oct. 22, 1986, 100 Stat. 2995, related to exemption from antitrust laws of rate agreements, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 10706 and 13703 of this title.

AMENDMENTS

1996—Subsec. (a)(5)(C). Pub. L. 104–287 substituted ''October 1, 1980,'' for ''the effective date of the Staggers Rail Act of 1980''.

§ 10707. Determination of market dominance in rail rate proceedings

(a) In this section, ''market dominance'' means an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.

(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Board under this part is challenged as being unreasonably high, the Board shall determine whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies. The Board may make that determination on its own initiative or on complaint. A finding by the Board that the rail carrier does not have market dominance is determinative in a proceeding under this part related to that rate or transportation unless changed or set aside by the Board or set aside by a court of competent jurisdiction.

(c) When the Board finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum.

(d)(1)(A) In making a determination under this section, the Board shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent.

(B) For purposes of this section, variable costs for a rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Uniform Rail Costing System cost finding methodology (or an alternative methodology adopted by the Board in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates, with adjustments specified by the Board. A rail carrier may meet its burden of proof under this subsection by establishing its variable costs in accordance with this paragraph, but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the Board shall prescribe.

(2) A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that—

(A) such rail carrier has or does not have market dominance over such transportation; or

(B) the proposed rate exceeds or does not exceed a reasonable maximum.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 815.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10709 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Prior sections 10707 and 10707a were omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Section 10707, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1380; Pub. L. 96–448, title II, § 207, Oct. 14, 1980, 94 Stat. 1907; Pub. L. 103–272, § 4(j)(21), July 5, 1994, 108 Stat. 1369, related to investigation and suspension of new rail carrier rates, classifications, rules, and practices.

Section 10707a, added Pub. L. 96–448, title II, § 203(a), Oct. 14, 1980, 94 Stat. 1901; amended Pub. L. 103–272, § 4(j)(22), July 5, 1994, 108 Stat. 1369, related to zone of rail carrier flexibility.

§ 10708. Rail cost adjustment factor

(a) The Board shall, as often as practicable, but in no event less often than quarterly, publish a rail cost adjustment factor which shall be a fraction, the numerator of which is the latest published Index of Railroad Costs (which index shall be compiled or verified by the Board, with appropriate adjustments to reflect the change in composition of railroad costs, including the quality and mix of material and labor) and the denominator of which is the same index for the fourth quarter of every fifth year, beginning with the fourth quarter of 1992.

(b) The rail cost adjustment factor published by the Board under subsection (a) of this section shall take into account changes in railroad productivity. The Board shall also publish a similar index that does not take into account changes in railroad productivity.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 816.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10712 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 10708, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1382; Pub. L. 96–296, § 11, July 1, 1980, 94 Stat. 801; Pub. L. 97–261, §§ 11, 12(a), Sept. 20, 1982, 96 Stat. 1112, 1113; Pub. L. 99–521, § 7(d), Oct. 22, 1986, 100 Stat. 2995, related to investigation and suspension of new nonrail carrier rates, classifications, rules, and practices, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 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