(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.

(Added Pub. L. 104–291, title II, §209(a), Oct. 11, 1996, 110 Stat. 3458.)

SUBTITLE IV—INTERSTATE TRANSPORTATION

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PRIOR PROVISIONS

A prior subtitle IV, consisting of chapters 101 to 119, related to interstate commerce, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 521, 703, 721, 722, 723, 724, 727, 24301, 28301, 41309, 41502 of this title; title 7 section 225; title 11 sections 1166, 1169; title 15 sections 19, 21, 26, 44, 1681s, 1691c, 1692*l*; title 16 section 813; title 18 section 2341; title 28 sections 2321, 2323; title 29 section 1841; title 33 section 1507; title 42 sections 4916, 4917; title 45 sections 151, 157, 741, 791, 912, 1007, 1103, 1104, 1112; title 46 App. section 884; title 47 section 601; title 48 section 751.

[1] So in original. Does not conform to chapter heading.

PART A—RAIL

CHAPTER 101—GENERAL PROVISIONS

Sec.
10101. Rail transportation policy.
10102. Definitions.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 22101, 22107, 24301, 24501 of this title; title 26 sections 168, 281, 3231, 7701; title 29 section 213; title 45 sections 231, 351, 661, 702, 741, 744, 802, 1207.

§10101. Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government—

(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

(7) to reduce regulatory barriers to entry into and exit from the industry;

(8) to operate transportation facilities and equipment without detriment to the public health and safety;

(9) to encourage honest and efficient management of railroads;

(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

(14) to encourage and promote energy conservation; and

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 805.)

PRIOR PROVISIONS

Prior sections 10101 and 10101a were omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Section 10101, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1337; Pub. L. 96–296, § 4, July 1, 1980, 94 Stat. 793; Pub. L. 96–448, title I, § 101(b), Oct. 14, 1980, 94 Stat. 1898; Pub. L. 97–261, § 5, Sept. 20, 1982, 96 Stat. 1103; Pub. L. 103–311, title II, § 204, Aug. 26, 1994, 108 Stat. 1683, related to transportation policy. See sections 13101 and 15101 of this title.

Section 10101a, added Pub. L. 96–448, title I, § 101(a), Oct. 14, 1980, 94 Stat. 1897, related to rail transportation policy.

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.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–521, § 1, Oct. 22, 1986, 100 Stat. 2993, provided that: ''This Act [see Tables for classification] may be cited as the 'Surface Freight Forwarder Deregulation Act of 1986'.''

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–261 provided: ''That this Act [see Tables for classification] may be cited as the 'Bus Regulatory Reform Act of 1982'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–454, § 1, Oct. 15, 1980, 94 Stat. 2011, provided: ''That this Act [see Tables for classification] may be cited as the 'Household Goods Transportation Act of 1980'.''

Section 1 of Pub. L. 96–448 provided that: ''This Act [see Tables for classification] may be cited as the 'Staggers Rail Act of 1980'.''

Section 1 of Pub. L. 96–296 provided: ''That this Act [see Tables for classification] may be cited as the 'Motor Carrier Act of 1980'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 10502, 10706 of this title; title 33 section 1803.

§ 10102. Definitions

In this part—

(1) ''Board'' means the Surface Transportation Board;

(2) ''car service'' includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;

(3) ''control'', when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;

(4) ''person'', in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person;

(5) ''rail carrier'' means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

(6) ''railroad'' includes—

(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

(7) ''rate'' means a rate or charge for transportation;

(8) ''State'' means a State of the United States and the District of Columbia;

(9) ''transportation'' includes—

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

(10) ''United States'' means the States of the United States and the District of Columbia.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 806.)

PRIOR PROVISIONS

Prior sections 10102 and 10103 were omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Section 10102, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1338; Pub. L. 96–296, § 10(a)(1), July 1, 1980, 94 Stat. 799; Pub. L. 96–454, § 3(a), Oct. 15, 1980, 94 Stat. 2011; Pub. L. 97–261, § 6(d)(1), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99–521, § 4, Oct. 22, 1986, 100 Stat. 2993; Pub. L. 103–272, § 5(m)(13), July 5, 1994, 108 Stat. 1377; Pub. L. 103–311, title II, §§ 205(b), 206(f), Aug. 26, 1994, 108 Stat. 1683, 1686, defined terms used in this subtitle. See sections 10102, 13102, and 15102 of this title.

Section 10103, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1340; Pub. L. 96–448, title II, § 214(c)(2), Oct. 14, 1980, 94 Stat. 1915, provided that the remedies under this subtitle were cumulative. See sections 10501, 13103, and 15103 of this title.

A prior chapter 103, consisting of sections 10301 to 10311, 10321, 10322, 10324, 10326 to 10330, 10341 to 10344, 10361 to 10364, and 10381 to 10388, was omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See chapter 7 of this title.

Section 10301, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1341; Pub. L. 97–253, title V, § 502(b), (e), (h)(1), Sept. 8, 1982, 96 Stat. 806, related to organization, membership, administration, seal, and expenses of Interstate Commerce Commission.

Section 10302, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1342, related to divisions of Commission.

Section 10303, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1342, related to Secretary and public records of Commission.

Section 10304, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1342, related to employee boards of Commission.

Section 10305, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1342, related to delegation of authority by Commission.

Section 10306, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1343, related to conduct of Commission proceedings.

Section 10307, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1343, related to offices and sessions of Commission.

Section 10308, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1343, related to admission to practice before Commission.

Section 10309, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1344; Pub. L. 103–437, §18, Nov. 2, 1994, 108 Stat. 4596, related to access to Commission records by congressional committees.

Section 10310, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1344, related to reports of official Commission actions.

Section 10311, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1345, required Commission to submit annual report to Congress.

Section 10321, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1345; Pub. L. 97–261, §24, Sept. 20, 1982, 96 Stat. 1124; Pub. L. 103–272, §4(j)(12), July 5, 1994, 108 Stat. 1368, related to powers of Commission.

Section 10322, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1346; Pub. L. 96–296, §25(a), July 1, 1980, 94 Stat. 816; Pub. L. 96–454, §5(b), Oct. 15, 1980, 94 Stat. 2014; Pub. L. 97–261, §§6(e), 16(c), 17(b), 28(a), Sept. 20, 1982, 96 Stat. 1107, 1117, 1119, 1128; Pub. L. 98–554, title II, §226(c)(1), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 103–272, §5(m)(14), July 5, 1994, 108 Stat. 1377, related to Commission action and appellate procedure in non-rail proceedings.

A prior section 10323, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1346, related to rehearing, reargument, and reconsideration in nonrail proceedings, prior to repeal by Pub. L. 96–296, §25(b), July 1, 1980, 94 Stat. 818.

Section 10324, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1347; Pub. L. 96–258, §1(1), June 3, 1980, 94 Stat. 425; Pub. L. 96–296, §25(c), July 1, 1980, 94 Stat. 818, related to taking effect, duration, and modification of Commission actions.

A prior section 10325, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1347, provided for judicial review in nonrail proceedings, prior to repeal by Pub. L. 96–296, §25(d), July 1, 1980, 94 Stat. 818.

Section 10326, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1348, related to limitations in rulemaking proceedings related to rail carriers.

Section 10327, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1348; Pub. L. 96–258, §1(2), June 3, 1980, 94 Stat. 425; Pub. L. 96–296, §25(e), July 1, 1980, 94 Stat. 818; Pub. L. 97–375, title I, §113, Dec. 21, 1982, 96 Stat. 1821; Pub. L. 104–66, title II, §2101, Dec. 21, 1995, 109 Stat. 730, related to Commission action and appellate procedure in rail carrier proceedings.

Section 10328, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1350; Pub. L. 97–261, §28(b), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 99–521, §5(a), Oct. 22, 1986, 100 Stat. 2994, related to intervention in Commission proceedings.

Section 10329, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1351; Pub. L. 99–521, §5(b), Oct. 22, 1986, 100 Stat. 2994, related to service of notice in Commission proceedings.

Section 10330, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1352, related to service of process in court proceedings.

Section 10341, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1352, authorized Commission to refer matters to joint boards.

Section 10342, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1353, related to establishment and membership of joint boards.

Section 10343, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1353, related to powers of joint boards.

Section 10344, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1354; Pub. L. 96–296, §36, July 1, 1980, 94 Stat. 826, related to administration and proceedings of joint boards.

Section 10361, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1355, related to Rail Services Planning Office.

Section 10362, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1355; Pub. L. 98–216, §2(5)–(7), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99–509, title IV, §4033(c)(7), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 103–272, §4(j)(13), July 5, 1994, 108 Stat. 1368, related to duties of Rail Services Planning Office.

Section 10363, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1356; Pub. L. 103–272, §4(j)(14), July 5, 1994, 108 Stat. 1369, related to appointment and duties of Director of Rail Services Planning Office.

Section 10364, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1356; Pub. L. 103–272, §5(m)(15), July 5, 1994, 108 Stat. 1377, related to powers of and assistance to Director.

Section 10381, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1357, related to Office of Rail Public Counsel.

Section 10382, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1357; Pub. L. 96–258, §1(3), June 3, 1980, 94 Stat. 425, related to duties and standing of Office of Rail Public Counsel.

Section 10383, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1357; Pub. L. 103–272, §4(j)(14), July 5, 1994, 108 Stat. 1369, related to duties and appointment of Director of Office of Rail Public Counsel.

Section 10384, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1358, related to staff of Office of Rail Public Counsel.

Section 10385, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1358; Pub. L. 103–272, §5(m)(15), July 5, 1994, 108 Stat. 1377, related to powers of Office of Rail Public Counsel.

Section 10386, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1358, related to reports concerning activities of Office of Rail Public Counsel.

Section 10387, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1358, related to budget requests and estimates of Office of Rail Public Counsel.

Section 10388, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1358; Pub. L. 96–73, title III, §301, Sept. 29, 1979, 93 Stat. 557, authorized appropriations for Office of Rail Public Counsel for fiscal year ending Sept. 30, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 41713 of this title; title 45 section 1344.

CHAPTER 105—JURISDICTION

Sec.
10501. General jurisdiction.
10502. Authority to exempt rail carrier transportation.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 13503, 14706, 24501 of this title.

§10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules),

practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection—

(A) the term ''local governmental authority''—

(i) has the same meaning given that term by section 5302(a) of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term ''mass transportation'' means transportation services described in section 5302(a) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 807; amended Pub. L. 104–287, § 5(21), Oct. 11, 1996, 110 Stat. 3390.)

REFERENCES IN TEXT

The ICC Termination Act of 1995, referred to in subsec. (c)(3)(B), is Pub. L. 104–88, Dec. 29, 1995, 109 Stat. 803. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 101 of this title and Tables.

The Railway Labor Act, referred to in subsec. (c)(3)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (c)(3)(B), is act Aug. 16, 1954, ch. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§ 3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (c)(3)(B), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10501 and 10504 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 10501, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1359; Pub. L. 96–448, title II, § 214(c)(3)–(5), Oct. 14, 1980, 94 Stat. 1915; Pub. L. 103–272, § 4(j)(15), July 5, 1994, 108 Stat. 1369, related to jurisdiction of the Interstate Commerce Commission, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 10501 and 15301 of this title.

AMENDMENTS

1996—Subsec. (c)(3)(B). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of the ICC Termination Act of 1995''.

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.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

§ 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, § 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, § 102(a).

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, § 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, § 4(b)(4), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 103–272, § 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, § 213, Oct. 14, 1980, 94 Stat. 1912; Pub. L. 103–311, title II, § 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, § 31(b), July 1, 1980, 94 Stat. 824; Pub. L. 97–261, § 6(f), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99–521, § 6(a), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103–305, title VI, § 601(b)(2)(C), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103–311, title II, § 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, § 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, § 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, § 1(4), June 3, 1980, 94 Stat. 425; Pub. L. 97–261, § 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, § 1(5), June 3, 1980, 94 Stat. 425; Pub. L. 96–296, §§ 7, 21(a), 24(a), July 1, 1980, 94 Stat. 797, 812, 814; Pub. L. 96–454, § 11(a), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 97–261, § 14(d), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 97–377, § 152, Dec. 21, 1982, 96 Stat. 1918; Pub. L. 97–449, § 5(g)(1), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 98–216, § 2(8), Feb. 14, 1984, 98 Stat. 5; Pub. L. 98–554, title II, § 227(c), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103–272, § 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, § 16(a), July 1, 1980, 94 Stat. 810; amended Pub. L. 103–272, § 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, § 21(b)(1), July 1, 1980, 94 Stat. 812; amended Pub. L. 96–454, § 11(b), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 103–272, § 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, § 24(b)(1), July 1, 1980, 94 Stat. 814; amended Pub. L. 103–272, § 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, § 226(a)(1), Oct. 30, 1984, 98 Stat. 2848; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–690, title IX, § 9111(a)–(f), Nov. 18, 1988, 102 Stat. 4531–4533; Pub. L. 103–272, § 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, § 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, § 3(b), Aug. 26, 1983, 97 Stat. 599; Pub. L. 98–216, § 2(9), (10), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103–272, § 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, § 1(6), June 3, 1980, 94 Stat. 425; Pub. L. 97–449, § 5(g)(2), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98–216, § 2(11), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103–272, § 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, § 6(c), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103–272, § 5(m)(20), July 5, 1994, 108 Stat. 1377, re-

lated 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, § 5(g)(3), Jan. 12, 1983, 96 Stat. 2443, related to exempt freight forwarder service, prior to repeal by Pub. L. 99–521, §§ 6(d)(1), 15, Oct. 22, 1986, 100 Stat. 2994, 2999, effective 60 days after Oct. 22, 1986.

CHAPTER 107—RATES

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 10907 of this title.

SUBCHAPTER I—GENERAL AUTHORITY

§ 10701. Standards for rates, classifications, through routes, rules, and practices

(a) A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(c) Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

(2) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—

(A) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;

(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(C) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues,

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

(3) The Board shall, within one year after January 1, 1996, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 809; amended Pub. L. 104–287, § 5(22), Oct. 11, 1996, 110 Stat. 3390.)

PRIOR PROVISIONS

Prior sections 10701 and 10701a were omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Section 10701, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1371; Pub. L. 96–296, § 13(a), July 1, 1980, 94 Stat. 803; Pub. L. 96–448, title II, § 201(b)(1), (2), Oct. 14, 1980, 94 Stat. 1899, 1900; Pub. L. 97–261, § 9(a), Sept. 20, 1982, 96 Stat. 1109; Pub. L. 103–180, § 2(a), (b), (g), Dec. 3, 1993, 107 Stat. 2044, 2047, 2049, related to standards for rates, classifications, through routes, rules, and practices. See sections 10701, 13701, 13709, and 15501 of this title.

Section 10701a, added Pub. L. 96–448, title II, § 201(a), Oct. 14, 1980, 94 Stat. 1898; amended Pub. L. 103–272, § 4(j)(19), July 5, 1994, 108 Stat. 1369, related to standards for rates for rail carriers. See section 10701 of this title.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of this paragraph''.

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.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10704, 10705 of this title.

§10702. Authority for rail carriers to establish rates, classifications, rules, and practices

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable—

(1) rates, to the extent required by section 10707, divisions of joint rates, and classifications for transportation and service it may provide under this part; and

(2) rules and practices on matters related to that transportation or service.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 810.)

PRIOR PROVISIONS

A prior section 10702, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1372; Pub. L. 103–180, §6(a), Dec. 3, 1993, 107 Stat. 2050; Pub. L. 103–311, title II, §206(a), Aug. 26, 1994, 108 Stat. 1684, related to authority for carriers to establish rates, classifications, rules, and practices, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 10702 and 15502 of this title.

§10703. Authority for rail carriers to establish through routes

Rail carriers providing transportation subject to the jurisdiction of the Board under this part shall establish through routes (including physical connections) with each other and with water carriers providing transportation subject to chapter 137, shall establish rates and classifications applicable to those routes, and shall establish rules for their operation and provide—

(1) reasonable facilities for operating the through route; and

(2) reasonable compensation to persons entitled to compensation for services related to the through route.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 810.)

PRIOR PROVISIONS

A prior section 10703, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1372; Pub. L. 96–296, §22(a), (h), July 1, 1980, 94 Stat. 812, 814; Pub. L. 97–449, §5(g)(5), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98–216, §2(11), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99–521, §7(a), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103–272, §5(m)(21), July 5, 1994, 108 Stat. 1377, related to authority for carriers to establish through routes, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 10703 and 13705 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10705 of this title.

§10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Board

(a)(1) When the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

(2) The Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Board shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should—

(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity 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''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10701 of this title.

§ 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10907 of this title.

§ 10706. Rate agreements: exemption from antitrust 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 terminal carriers or agencies) can be provided by that carrier; and

(C) the term ''practicably participates in the movement'' shall have such meaning as the Board shall by regulation prescribe.

(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Board under this part that is a party to an agreement of at least 2 rail carriers that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of them, shall apply to the Board for approval of that agreement under this subsection. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Board approves the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Board may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

(B) The Board may approve an agreement under subparagraph (A) of this paragraph only when the rail carriers applying for approval file a verified statement with the Board. Each state-

ment must specify for each rail carrier that is a party to the agreement—

(i) the name of the carrier;

(ii) the mailing address and telephone number of its headquarter's office; and

(iii) the names of each of its affiliates and the names, addresses, and affiliates of each of its officers and directors and of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least $1,000,000.

(3)(A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

(i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, except that for purposes of general rate increases and broad changes in rates, classifications, rules, and practices only, if the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;

(ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in the movement; or

(iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. If the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.

(B)(i) In any proceeding in which a party alleges that a rail carrier voted or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, proof of an agreement, conspiracy, or combination may not be inferred from evidence that two or more rail carriers acted together with respect to an interline rate or related matter and that a party to such action took similar action with respect to a rate or related matter on another route or traffic. In any proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement—

(I) was in accordance with an agreement approved under paragraph (2) of this subsection; or

(II) concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in the first sentence of this clause.

In any proceeding before a jury, the court shall determine whether the requirements of subclause (I) or (II) are satisfied before allowing the introduction of any such evidence.

(C) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcripts or recordings and voting records be submitted to the Board and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5, United States Code.

(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Board approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Board may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves that relates to the amount of compensation such shippers propose to be paid by rail carriers providing transportation subject to the jurisdiction of the Board under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Board for approval of that agreement under this paragraph. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Board approves the agreement, it may be made and carried out under its terms and under the terms required by the Board, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement. The Board shall approve or disapprove an agreement under this paragraph within one year after the date application for approval of such agreement is made.

(B) If the Board approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling

stock owned or leased by such shippers, under payment by such carriers or under a published allowance, are unable to agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Board. The Board shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Board.

(C) Nothing in this paragraph shall be construed to change the law in effect prior to October 1, 1980, with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers.

(b) The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board may inspect a record maintained under this section.

(c) The Board may review an agreement approved under subsection (a) of this section and shall change the conditions of approval or terminate it when necessary to comply with the public interest and subsection (a). The Board shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

(d) The Board may begin a proceeding under this section on its own initiative or on application. Action of the Board under this section—

(1) approving an agreement;

(2) denying, ending, or changing approval;

(3) prescribing the conditions on which approval is granted; or

(4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a) of this section.

(e)(1) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall prepare periodically an assessment of, and shall report to the Board on—

(A) possible anticompetitive features of—

(i) agreements approved or submitted for approval under subsection (a) of this section; and

(ii) an organization operating under those agreements; and

(B) possible ways to alleviate or end an anticompetitive feature, effect, or aspect in a manner that will further the goals of this part and of the transportation policy of section 10101 of this title.

(2) Reports received by the Board under this subsection shall be published and made available to the public under section 552(a) of title 5.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 812; amended Pub. L. 104–287, § 5(24), Oct. 11, 1996, 110 Stat. 3390.)

REFERENCES IN TEXT

The Sherman Act, referred to in subsec. (a)(2)(A), (4), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in subsec. (a)(2)(A), (4), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15 and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(2)(A), (4), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Wilson Tariff Act, referred to in subsec. (a)(2)(A), (4), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, which enacted sections 8 and 9, respectively, of Title 15.

Act of June 19, 1936, referred to in subsec. (a)(2)(A), (4), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Anti-discrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15 and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 10706, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1377; Pub. L. 96–258, § 1(7), June 3, 1980, 94 Stat. 426; 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10701, 10702 of this title.

§ 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 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.

(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''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10741, 11101, 11904 of this title.

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 3709 of the Revised Statutes (41 U.S.C. 5) 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.)

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24301 of this title; title 31 section 3726.

§10722. Car utilization

In order to encourage more efficient use of freight cars, notwithstanding any other provision of this part, rail carriers shall be permitted to establish premium charges for special services or special levels of services not otherwise applicable to the movement. The Board shall facilitate development of such charges so as to increase the utilization of equipment.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10734 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10722 to 10726 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 10722, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1384; Pub. L. 97–261, §29(a), (b), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 99–521, §7(e), Oct. 22, 1986, 100 Stat. 2995, related to special passenger rates.

Section 10723, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1385; Pub. L. 97–261, §29(c), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 102–54, §13(s), June 13, 1991, 105 Stat. 282; Pub. L. 102–240, title IV, §4011, Dec. 18, 1991, 105 Stat. 2156, related to transportation for charitable purposes.

Section 10724, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1386, related to rates for emergency transportation.

Section 10725, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1387; Pub. L. 99–521, §7(f), Oct. 22, 1986, 100 Stat. 2995, related to special freight forwarder rates.

Section 10726, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1387; Pub. L. 96–448, title II, §220, Oct. 14, 1980, 94 Stat. 1928, related to long and short haul transportation.

A prior section 10727, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1388, authorized the Interstate Commerce Commission to maintain standards and procedures to permit seasonal, regional, or peak-period demand rates and required the Commission to submit an annual report to Congress on implementation of those rates and recommendations for additional legislation needed to make it easier to establish those rates, prior to repeal by Pub. L. 96–448, title II, §209, title VII, §710(a), Oct. 14, 1980, 94 Stat. 1910, 1966, effective Oct. 1, 1980.

A prior section 10728, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1388, related to separate rates for distinct rail services, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 10729, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1389, authorized rail carrier to establish rate, classification, rule, or practice requiring total capital investment of at least $1,000,000 to implement upon notice to Interstate Commerce Commission and opportunity for Commission proceeding and final decision within 180 days after notice and provided that Commission could not suspend or set aside any rate that became final for period of five years but could revise rate to level equal to variable costs of providing transportation when Commission found level then in effect reduced going concern of carrier, prior to repeal by Pub. L. 96–448, title II, §210(a), title VII, §710(a), Oct. 14, 1980, 94 Stat. 1910, 1966, effective Oct. 1, 1980.

Prior sections 10730 to 10735 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 10730, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1389; Pub. L. 96–296, §12, July 1, 1980, 94 Stat. 802; Pub. L. 96–448, title II, §211(a), (b), Oct. 14, 1980, 94 Stat. 1911; Pub. L. 99–521, §7(g), Oct. 22, 1986, 100 Stat. 2995, related to rates and liability based on value.

Section 10731, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1389; Pub. L. 96–448, title II, §204, Oct. 14, 1980, 94 Stat. 1905; Pub. L. 103–272, §4(j)(23), July 5, 1994, 108 Stat. 1369, related to investigation of discriminatory rail rates for transportation of recyclable or recycled materials.

Section 10732, added Pub. L. 96–296, §8(a), July 1, 1980, 94 Stat. 798; amended Pub. L. 100–690, title IX, §9113, Nov. 18, 1988, 102 Stat. 4535, related to food and grocery transportation. See section 13713 of this title.

Section 10733, added Pub. L. 96–296, §32(a), July 1, 1980, 94 Stat. 824, related to rates for transportation of recyclable materials.

Section 10734, added Pub. L. 96–448, title II, §225(a), Oct. 14, 1980, 94 Stat. 1930, related to car utilization. See section 10722 of this title.

Another prior section 10734 was renumbered section 10735 of this title.

Section 10735, added Pub. L. 96–454, §4(a), Oct. 15, 1980, 94 Stat. 2012, §10734; renumbered §10735, Pub. L. 98–554, title II, §227(b)(1), Oct. 30, 1984, 98 Stat. 2852; amended Pub. L. 103–272, §5(m)(23), July 5, 1994, 108 Stat. 1378, related to household goods rates, estimates, and guarantees of service. See section 13704 of this title.

SUBCHAPTER III—LIMITATIONS

§10741. Prohibitions against discrimination by rail carriers

(a)(1) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

(2) For purposes of this section, a rail carrier engages in unreasonable discrimination when it charges or receives from a person a different compensation for a service rendered, or to be rendered, in transportation the rail carrier may perform under this part than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances.

(b) This section shall not apply to—

(1) contracts described in section 10709 of this title;

(2) rail rates applicable to different routes; or

(3) discrimination against the traffic of another carrier providing transportation by any mode.

(c) Differences between rates, classifications, rules, and practices of rail carriers do not constitute a violation of this section if such differences result from different services provided by rail carriers.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 819.)

PRIOR PROVISIONS

A prior section 10741, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1390; Pub. L. 96–296, § 33(d), July 1, 1980, 94 Stat. 825; Pub. L. 96–448, title II, § 212, Oct. 14, 1980, 94 Stat. 1912; Pub. L. 99–521, § 7(h), Oct. 22, 1986, 100 Stat. 2995, related to prohibitions against discrimination by common carriers, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 10741 and 15505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10705, 10709 of this title.

§ 10742. Facilities for interchange of traffic

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 819.)

PRIOR PROVISIONS

A prior section 10742, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1391, related to facilities for interchange of traffic, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 10742 and 15506 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10705 of this title.

§ 10743. Liability for payment of rates

(a)(1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor instructs the rail carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

(A) of the agency and absence of beneficial title; and

(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the rail carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the rail carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

(b) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor, named in the bill of lading as consignee, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul rail carrier that is to make ultimate delivery—

(1) to deliver the property to another party identified by the shipper or consignor as the beneficial owner of the property; and

(2) that delivery is to be made to that party on payment of all applicable transportation rates;

that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under paragraph (2) of this subsection on delivery. However, if the party gives written notice to the delivering rail carrier before delivery that the party is not the beneficial owner of the property and gives the rail carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering rail carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.

(c)(1) A rail carrier may bring an action to enforce liability under subsection (a) of this section. That rail carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the consignee, or the beneficial owner named by the consignee or agent, under that section.

(2) A rail carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 819.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10744 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 10743, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1391; Pub. L. 99–521, § 7(i), Oct. 22, 1986, 100 Stat. 2995, related to payment of rates, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 13707 of this title.

§10744. Continuous carriage of freight

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not enter a combination or arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination whether by change of time schedule, carriage in different cars, or by other means. The carriage of freight by those rail carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage, or interruption is not made in good faith for a necessary purpose, and with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this part.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10745 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 10744, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1391, related to liability for payment of rates, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 10743 and 13706 of this title.

§10745. Transportation services or facilities furnished by shipper

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Board may prescribe the maximum reasonable charge or allowance a rail carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section. The Board may begin a proceeding under this section on its own initiative or on application.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10747 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 10745, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1392, related to continuous carriage of freight, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See section 10744 of this title.

§10746. Demurrage charges

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to—

(1) freight car use and distribution; and

(2) maintenance of an adequate supply of freight cars to be available for transportation of property.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10750 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 10746, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1393, related to transportation of commodities manufactured or produced by rail carrier, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§10747. Designation of certain routes by shippers

(a)(1) When a person delivers property to a rail carrier for transportation subject to the jurisdiction of the Board under this part, the person may direct the rail carrier to transport the property over an established through route. When competing rail lines constitute a part of the route, the person shipping the property may designate the lines over which the property will be transported. The designation must be in writing. A rail carrier may be directed to transport property over a particular through route when—

(A) there are at least 2 through routes over which the property could be transported;

(B) a through rate has been established for transportation over each of those through routes; and

(C) the rail carrier is a party to those routes and rates.

(2) A rail carrier directed to route property transported under paragraph (1) of this subsection must issue a through bill of lading containing the routing instructions and transport the property according to the instructions. When the property is delivered to a connecting rail carrier, that rail carrier must also receive and transport it according to the routing instructions and deliver it to the next succeeding rail carrier or consignee according to the instructions.

(b) The Board may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 821.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10763 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10747 to 10751, 10761 to 10767, and 10781 to 10786 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 10747, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1393, related to transportation services or facilities furnished by shippers. See section 10745 of this title.

Section 10748, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1393, related to transportation of livestock by rail carrier.

Section 10749, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1393; Pub. L. 96–296, §10(c), July 1, 1980, 94 Stat. 800; Pub. L. 97–468, title VI, §615(b)(3), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–216, §2(13), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99–521, §7(j)(1), (2), Oct. 22, 1986, 100 Stat. 2995; Pub. L. 103–272, §4(j)(24), July 5, 1994, 108 Stat. 1369, related to exchange of services and limitation on use of common carriers by household goods freight forwarders.

Section 10750, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1394, related to demurrage charges. See section 10746 of this title.

Section 10751, added Pub. L. 96–296, §33(a), July 1, 1980, 94 Stat. 824; amended Pub. L. 96–448, title II, §215(a), Oct. 14, 1980, 94 Stat. 1915; Pub. L. 103–272, §4(j)(25), July 5, 1994, 108 Stat. 1369, related to business entertainment expenses. See section 14901 of this title.

Section 10761, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1394; Pub. L. 96–296, §33(c), July 1, 1980, 94 Stat. 825; Pub. L. 103–311, title II, §206(b), Aug. 26, 1994, 108 Stat. 1684,

related to prohibition of transportation without tariff. See section 13702 of this title.

Section 10762, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1394; Pub. L. 96–296, § 5(c), July 1, 1980, 94 Stat. 796; Pub. L. 96–448, title II, § 216, Oct. 14, 1980, 94 Stat. 1915; Pub. L. 97–261, § 12(b), Sept. 20, 1982, 96 Stat. 1113; Pub. L. 99–521, § 7(k), Oct. 22, 1986, 100 Stat. 2995; Pub. L. 103–180, § 5, Dec. 3, 1993, 107 Stat. 2050; Pub. L. 103–311, title II, § 206(c)–(e), Aug. 26, 1994, 108 Stat. 1684, 1685, related to general tariff requirements. See sections 13702 and 13710 of this title.

Section 10763, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1396, related to designation of certain routes by shippers or Interstate Commerce Commission. See section 10747 of this title.

Section 10764, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1397, related to arrangements between carriers and required copies of arrangements to be filed with Commission.

Section 10765, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1397, related to water transportation under arrangements with certain other carriers.

Section 10766, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1398; Pub. L. 96–296, § 10(d), July 1, 1980, 94 Stat. 801; Pub. L. 99–521, § 7(*l*), Oct. 22, 1986, 100 Stat. 2995, related to freight forwarder traffic agreements.

Section 10767, added Pub. L. 103–180, § 7(a), Dec. 3, 1993, 107 Stat. 2051, related to billing and collecting practices. See section 13708 of this title.

Section 10781, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1398, related to investigations and reports by Commission on value of carrier property.

Section 10782, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1399, related to requirements for establishing value.

Section 10783, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1400, related to cooperation and assistance of carriers.

Section 10784, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1400; Pub. L. 96–258, § 1(8), June 3, 1980, 94 Stat. 426, related to revision of property valuations.

Section 10785, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1401, related to finality of valuations, notices, protests, and review.

Section 10786, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1401, related to applicability of sections 10781 to 10786 of this title.

CHAPTER 109—LICENSING

Sec.
10901. Authorizing construction and operation of railroad lines.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 45 section 748.

§ 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 refusing 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, § 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, § 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, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10906, 11702, 11901 of this title; title 45 section 904.

§ 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 re-

quested 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, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11702, 11901 of this title; title 45 section 797*l*.

§ 10903. Filing and procedure for application to abandon or discontinue

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

(A) abandon any part of its railroad lines; or

(B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application shall include—

(A) an accurate and understandable summary of the rail carrier's reasons for the proposed abandonment or discontinuance;

(B) a statement indicating that each interested person is entitled to make recommendations to the Board on the future of the rail line; and

(C)(i) a statement that the line is available for subsidy or sale in accordance with section 10904 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the annual subsidy and minimum purchase price, calculated in accordance with section 10904 of this title, and (iii) the name and business address of the person who is authorized to discuss the subsidy or sale terms for the rail carrier.

(3) The rail carrier shall—

(A) send by certified mail notice of the application to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Board) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the application filed with the Board an affidavit certifying the manner in which subparagraphs (A) through (D) of this paragraph have been satisfied, and certifying that subparagraphs (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

(b)(1) Except as provided in subsection (d), abandonment and discontinuance may occur as provided in section 10904.

(2) The Board shall require as a condition of any abandonment or discontinuance under this section provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11326(a) and 24706(c) of this title.

(c)(1) In this subsection, the term ''potentially subject to abandonment'' has the meaning given the term in regulations of the Board. The regulations may include standards that vary by region of the United States and by railroad or group of railroads.

(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the rail carrier. The rail carrier shall submit to the Board and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

(B) identify each railroad line for which the rail carrier plans to file an application to abandon or discontinue under subsection (a) of this section.

(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or per-

mit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(e) Subject to this section and sections 10904 and 10905 of this title, if the Board—

(1) finds public convenience and necessity, it shall—

(A) approve the application as filed; or

(B) approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity; or

(2) fails to find public convenience and necessity, it shall deny the application.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 823.)

PRIOR PROVISIONS

A prior section 10903, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1403; Pub. L. 96–448, title IV, §402(a), Oct. 14, 1980, 94 Stat. 1941; Pub. L. 98–216, §2(14), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103–272, §5(m)(24), July 5, 1994, 108 Stat. 1378, related to authorizing abandonment and discontinuance of railroad lines and rail transportation.

RAILROAD BRANCHLINE ABANDONMENTS BY BURLINGTON NORTHERN RAILROAD IN NORTH DAKOTA

Pub. L. 97–102, title IV, §402, Dec. 23, 1981, 95 Stat. 1465, as amended by Pub. L. 102–143, title III, §343, Oct. 28, 1991, 105 Stat. 948, provided that: ''Notwithstanding any other provision of law or of this Act, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline abandonments in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excess of a total of 350 miles, except that exempt abandonments and discontinuances that are effectuated pursuant to section 1152.50 of title 49 of the Code of Federal Regulations after the date of enactment of the Department of Transportation and Related Agencies Appropriations Act, 1992 [Oct. 28, 1991], shall not apply toward such 350-mile limit: *Provided*, That this section shall be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1982 (H.R. 4209), filed in the House of Representatives on November 13, 1981 (H. Rept. No. 97–331).'' [Section 311 of H.R. 4209 is section 311 of Pub. L. 97–102, title III, Dec. 23, 1981, 95 Stat. 1460, which is not classified to the Code.] Similar provisions were contained in Pub. L. 97–92, title IV, §115, Dec. 15, 1981, 95 Stat. 1196.

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10904, 10905, 10907, 11702, 11901 of this title; title 45 section 748.

§ 10904. Offers of financial assistance to avoid abandonment and discontinuance

(a) In this section—

(1) the term ''avoidable cost'' means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

(A) working capital and required capital expenditure;

(B) expenditures to eliminate deferred maintenance;

(C) the current cost of freight cars, locomotives, and other equipment; and

(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

(2) the term ''reasonable return'' means—

(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and

(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

(b) Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board—

(1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(2) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;

(3) traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad line; and

(4) any other information that the Board considers necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

(c) Within 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier's estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

(d)(1) Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with section 10903.

(2) If the Board finds that such an offer or offers of financial assistance has been made within

such period, abandonment or discontinuance shall be postponed until—

(A) the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or

(B) the conditions and amount of compensation are established under subsection (f).

(e) Except as provided in subsection (f)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Board establish the conditions and amount of compensation.

(f)(1) Whenever the Board is requested to establish the conditions and amount of compensation under this section—

(A) the Board shall render its decision within 30 days;

(B) for proposed sales, the Board shall determine the price and other terms of sale, except that in no case shall the Board set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services); and

(C) for proposed subsidies, the Board shall establish the compensation as the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line.

(2) The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board's decision. In such a case, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered pursuant to paragraph (3) of this subsection.

(3) If a rail carrier receives more than one offer to subsidize or purchase, it shall select the offeror with whom it wishes to transact business, and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation before the 40th day after the expiration of the 4-month period described in subsection (c). If no agreement on subsidy or sale is reached within such 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 4-month period described in subsection (c) may request that the Board establish the conditions and amount of compensation. If the Board has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 4-month period described in subsection (c) may accept the Board's decision within 20 days after such decision, and the Board shall require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board's decision.

(4)(A) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

(B) No subsidy arrangement approved under this section shall remain in effect for more than one year, unless otherwise mutually agreed by the parties.

(g) Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 11101(a), is extinguished.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 825.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10905 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 10904, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1404; Pub. L. 96–448, title IV, § 402(b), Oct. 14, 1980, 94 Stat. 1941; Pub. L. 98–216, § 2(4), Feb. 14, 1984, 98 Stat. 5, related to filing and procedure for applications to abandon or discontinue railroad lines or rail transportation, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 10903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10903, 11702, 11901 of this title; title 45 section 748.

§ 10905. Offering abandoned rail properties for sale for public purposes

When the Board approves an application to abandon or discontinue under section 10903, the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Board finds that the rail properties proposed to be abandoned are appropriate for public purposes and not required for continued rail operations, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Board. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 827.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10906 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 10905, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1405; Pub. L. 96–448, title IV, § 402(c), Oct. 14, 1980, 94 Stat. 1942; Pub. L. 103–272, § 4(j)(26), July 5, 1994, 108 Stat. 1369, related to offers of financial assistance to avoid abandonment and discontinuance, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 10904 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10903, 11702, 11901 of this title.

§ 10906. Exception

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the Board, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 827.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10907 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 10906, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1406, related to offering abandoned rail properties for sale for public purposes, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 10905 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11702, 11901 of this title.

§ 10907. Railroad development

(a) In this section, the term ''financially responsible person'' means a person who—

(1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and

(2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

(b)(1) When the Board finds that—

(A)(i) the public convenience and necessity require or permit the sale of a particular railroad line under this section; or

(ii) a railroad line is on a system diagram map as required under section 10903 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and

(B) an application to purchase such line has been filed by a financially responsible person,

the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

(2) For purposes of this subsection, the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.

(c)(1) For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that—

(A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

(B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

(C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

(2) In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of

a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 828.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10910 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10907 to 10910 and 10921 to 10936 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 10907, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1407, related to rail carriers entering into arrangements for joint use or ownership of spur, industrial, team, switching, or side tracks, and deprived Interstate Commerce Commission of authority over such tracks when located in one State or over certain electric railways. See sections 10102, 10501, and 10906 of this title.

Section 10908, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1407, related to discontinuing or changing interstate train or ferry transportation subject to State law.

Section 10909, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1408, related to discontinuing or changing train or ferry transportation in one State.

Section 10910, added Pub. L. 96–448, title IV, §401(a), Oct. 14, 1980, 94 Stat. 1939; amended Pub. L. 97–468, title V, §506(a), Jan. 14, 1983, 96 Stat. 2553; Pub. L. 103–272, §4(j)(27), July 5, 1994, 108 Stat. 1369, related to railroad development. See section 10907 of this title.

Section 10921, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1409, related to requirement for certificate, permit, or license. See section 13901 of this title.

Section 10922, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1409; Pub. L. 96–296, §§5(a), 6, 34(a), July 1, 1980, 94 Stat. 794, 796, 825; Pub. L. 96–454, §10(a), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97–261, §§6(a)–(c), (g), 7, 8, Sept. 20, 1982, 96 Stat. 1103, 1107, 1108; Pub. L. 98–554, title II, §§225(a), (b), 226(b), Oct. 30, 1984, 98 Stat. 2847, 2848, 2850; Pub. L. 100–17, title III, §§339, 340(a), Apr. 2, 1987, 101 Stat. 243, 245; Pub. L. 100–690, title IX, §9111(g), Nov. 18, 1988, 102 Stat. 4533; Pub. L. 102–240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 103–272, §5(m)(25), July 5, 1994, 108 Stat. 1378; Pub. L. 103–311, title II, §207, Aug. 26, 1994, 108 Stat. 1686; Pub. L. 103–429, §7(a)(4)(D), Oct. 31, 1994, 108 Stat. 4389, related to certificates of motor and water common carriers. See section 13902 of this title.

Section 10923, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1410; Pub. L. 96–258, §1(9), June 3, 1980, 94 Stat. 426; Pub. L. 96–296, §§10(a)(2), (3), 34(b), July 1, 1980, 94 Stat. 799, 800, 825; Pub. L. 97–261, §13(a), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 99–521, §8(a)(1), (2), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103–311, title II, §208, Aug. 26, 1994, 108 Stat. 1687, related to permits of motor and water contract carriers and household goods freight forwarders. See section 13903 of this title.

Section 10924, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96–296, §17(a), July 1, 1980, 94 Stat. 810; Pub. L. 97–261, §14(a)–(c), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 103–272, §4(j)(28), July 5, 1994, 108 Stat. 1370, related to licenses of motor carrier brokers. See section 13904 of this title.

Section 10925, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96–296, §§10(e), 17(b), July 1, 1980, 94 Stat. 801, 811; Pub. L. 97–261, §§13(b), 22, Sept. 20, 1982, 96 Stat. 1114, 1123; Pub. L. 97–449, §5(g)(6), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 99–521, §8(b), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103–311, title II, §209, Aug. 26, 1994, 108 Stat. 1688, related to effective periods of certificates, permits, and licenses. See section 13905 of this title.

Section 10926, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 99–521, §8(c), Oct. 22, 1986, 100 Stat. 2996, related to transfers of certificates and permits.

Section 10927, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 96–296, §29, July 1, 1980, 94 Stat. 820; Pub. L. 97–261, §18(h), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 98–554, title II, §226(c)(2), (3), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 99–521, §8(d), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 100–690, title IX, §9111(h), Nov. 18, 1988, 102 Stat. 4534; Pub. L. 103–272, §5(m)(26), July 5, 1994, 108 Stat. 1378, related to security of motor carriers, brokers, and freight forwarders. See section 13906 of this title.

Section 10928, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1414; Pub. L. 96–296, §23, July 1, 1980, 94 Stat. 814; Pub. L. 97–261, §15, Sept. 20, 1982, 96 Stat. 1114, related to temporary authority for motor and water carriers.

Section 10929, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1415, related to temporary authority for previously exempt water transportation.

Section 10930, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1415; Pub. L. 96–296, §10(b), July 1, 1980, 94 Stat. 800; Pub. L. 99–521, §8(e), Oct. 22, 1986, 100 Stat. 2996, related to limitations on certificates and permits.

Section 10931, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1416, related to motor common carriers providing transportation entirely in one State.

Section 10932, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1417, related to motor carrier savings provisions.

Section 10933, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1418; Pub. L. 99–521, §8(f)(1), (2), Oct. 22, 1986, 100 Stat. 2996, 2997, related to authorizing abandonment of household goods freight forwarder service.

Section 10934, added Pub. L. 96–454, §5(a)(1), Oct. 15, 1980, 94 Stat. 2013; amended Pub. L. 98–554, title II, §227(a)(2), Oct. 30, 1984, 98 Stat. 2852, related to household goods agents. See section 13907 of this title.

Section 10935, added Pub. L. 97–261, §16(a), Sept. 20, 1982, 96 Stat. 1115; amended Pub. L. 103–272, §5(m)(27), July 5, 1994, 108 Stat. 1378, related to discontinuing bus transportation in one State.

Section 10936, added Pub. L. 103–311, title II, §211(a), Aug. 26, 1994, 108 Stat. 1689, related to limitation on State regulation of intrastate passengers by bus.

CHAPTER 111—OPERATIONS

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SUBCHAPTER I—GENERAL REQUIREMENTS

§ 11101. Common carrier transportation, service, and rates

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

(b) A rail carrier shall also provide to any person, on request, the carrier's rates and other service terms. The response by a rail carrier to a request for the carrier's rates and other service terms shall be—

(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

(2) promptly made available in electronic form.

(c) A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

(1) has requested such rates or terms under subsection (b); or

(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

(d) With respect to transportation of agricultural products, in addition to the requirements of subsections (a), (b), and (c), a rail carrier shall publish, make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. For purposes of this subsection, agricultural products shall include grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and all products thereof, and fertilizer.

(e) A rail carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d).

(f) The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. Final regulations shall be adopted by the Board not later than 180 days after January 1, 1996.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 830; amended Pub. L. 104–287, § 5(25), Oct. 11, 1996, 110 Stat. 3390.)

PRIOR PROVISIONS

A prior section 11101, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1419; Pub. L. 96–258, § 1(10), June 3, 1980, 94 Stat. 426; Pub. L. 96–448, title II, § 222, Oct. 14, 1980, 94 Stat. 1929; Pub. L. 99–521, § 9(a), Oct. 22, 1986, 100 Stat. 2997; Pub. L. 103–180, § 8, Dec. 3, 1993, 107 Stat. 2052, related to duties of carriers to provide transportation and service, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 11101, 13710, 14101, and 15701 of this title.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of the ICC Termination Act of 1995''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10709, 10904 of this title.

§ 11102. Use of terminal facilities

(a) The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

(b) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

(c)(1) The Board may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.

(2) The Board may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.

(d) The Board shall complete any proceeding under subsection (a) or (b) within 180 days after the filing of the request for relief.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 831.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11103 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11102, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1419, related to classification of carriers, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10501, 10705 of this title.

§11103. Switch connections and tracks

(a) On application of the owner of a lateral branch line of railroad, or of a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection—

(1) is reasonably practicable;

(2) can be made safely; and

(3) will furnish sufficient business to justify its construction and maintenance.

(b) If a rail carrier fails to install and operate a switch connection after application is made under subsection (a) of this section, the owner of the lateral branch line of railroad or the shipper may file a complaint with the Board under section 11701 of this title. The Board shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Board may direct the rail carrier to comply with subsection (a) of this section only after a full hearing.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 831.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11104 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11103 to 11111 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11103, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1419; Pub. L. 96–448, title II, §223, Oct. 14, 1980, 94 Stat. 1929, related to use of terminal facilities. See section 11102 of this title.

Section 11104, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1420, related to switch connections and tracks. See section 11103 of this title.

Section 11105, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1420, related to protective services.

Section 11106, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1420, related to identification of motor vehicles.

Section 11107, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1420; Pub. L. 96–296, §15(d), July 1, 1980, 94 Stat. 809, related to leased motor vehicles. See section 14102 of this title.

Section 11108, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1421, related to water carriers subject to unreasonable discrimination in foreign transportation.

Section 11109, added Pub. L. 96–296, §15(a)(1), July 1, 1980, 94 Stat. 808, related to loading and unloading motor vehicles. See section 14103 of this title.

Section 11110, added Pub. L. 96–454, §6(a)(1), Oct. 15, 1980, 94 Stat. 2015, related to household goods carrier operations. See section 14104 of this title.

Section 11111, added Pub. L. 97–261, §25(d)(1), Sept. 20, 1982, 96 Stat. 1125, related to use of citizen band radios on buses.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10501 of this title.

SUBCHAPTER II—CAR SERVICE

§11121. Criteria

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Board may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service. The Board may begin a proceeding under this paragraph when an interested person files an application with it. The Board may act only after a hearing on the record and an affirmative finding, based on the evidence presented, that—

(A) providing the facilities or equipment will not materially and adversely affect the ability of the rail carrier to provide safe and adequate transportation;

(B) the amount spent for the facilities or equipment, including a return equal to the rail carrier's current cost of capital, will be recovered; and

(C) providing the facilities or equipment will not impair the ability of the rail carrier to attract adequate capital.

(2) The Board may require a rail carrier to file its car service rules with the Board.

(b) The Board may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 11123 and 11124(a)(1) of this title.

(c) The Board shall consult, as it considers necessary, with the National Grain Car Council on matters within the charter of that body.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 832.)

PRIOR PROVISIONS

A prior section 11121, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1421; Pub. L. 96–258, §1(11), June 3, 1980, 94 Stat. 426, related to criteria of rail carriers to furnish safe and adequate car service, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§11122. Compensation and practice

(a) The regulations of the Board on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include—

(1) the compensation to be paid for the use of a locomotive, freight car, or other vehicle;

(2) the other terms of any arrangement for the use by a rail carrier of a locomotive,

freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person; and

(3) sanctions for nonobservance.

(b) The rate of compensation to be paid for each type of freight car shall be determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost giving consideration to current costs of capital, repairs, materials, parts, and labor. In determining the rate of compensation, the Board shall consider the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 832.)

PRIOR PROVISIONS

A prior section 11122, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1421; Pub. L. 96–448, title II, § 224(a), Oct. 14, 1980, 94 Stat. 1929, related to use of and compensation for freight cars, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 11123. Situations requiring immediate action to serve the public

(a) When the Board determines that shortage of equipment, congestion of traffic, unauthorized cessation of operations, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days—

(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

(2) require joint or common use of railroad facilities;

(3) prescribe temporary through routes; or

(4) give directions for—

(A) preference or priority in transportation;

(B) embargoes; or

(C) movement of traffic under permits.

(b)(1) Except with respect to proceedings under paragraph (2) of this subsection, the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(2) Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them. The Board may act under subsection (a) before conducting a proceeding under this paragraph.

(3) When a rail carrier is directed under this section to operate the lines of another rail carrier due to that carrier's cessation of operations, compensation for the directed operations shall derive only from revenues generated by the directed operations.

(c)(1) The Board may extend any action taken under subsection (a) of this section beyond 30 days if the Board finds that a transportation emergency described in subsection (a) continues to exist. Action by the Board under subsection (a) of this section may not remain in effect for more than 240 days beyond the initial 30-day period.

(2) The Board may not take action under this section that would—

(A) cause a rail carrier to operate in violation of this part; or

(B) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

(3) A rail carrier directed by the Board to take action under this section is not responsible, as a result of that action, for debts of any other rail carrier.

(d) In carrying out this section, the Board shall require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the traffic subject to the action of the Board.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 833.)

PRIOR PROVISIONS

A prior section 11123, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1422; Pub. L. 96–448, title II, § 226, Oct. 14, 1980, 94 Stat. 1930, related to situations requiring immediate action, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11121, 11322, 11901 of this title.

§ 11124. War emergencies; embargoes imposed by carriers

(a)(1) When the President, during time of war or threatened war, notifies the Board that it is essential to the defense and security of the United States to give preference or priority to the movement of certain traffic, the Board shall direct that preference or priority be given to that traffic.

(2) When the President, during time of war or threatened war, demands that preference and precedence be given to the transportation of troops and material of war over all other traffic, all rail carriers providing transportation subject to the jurisdiction of the Board under this part shall adopt every means within their control to facilitate and expedite the military traffic.

(b) An embargo imposed by any such rail carrier does not apply to shipments consigned to agents of the United States Government for its use. The rail carrier shall deliver those shipments as promptly as possible.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 834.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11128 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Prior sections 11124 to 11128 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11124, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1422, related to rerouting traffic on failure of rail carrier to serve the public.

Section 11125, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1423; Pub. L. 98–216, §2(15), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103–272, §5(m)(28), July 5, 1994, 108 Stat. 1378, related to directed rail transportation.

Section 11126, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1424; Pub. L. 103–272, §5(m)(29), July 5, 1994, 108 Stat. 1378, related to distribution of coal cars.

Section 11127, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1424; Pub. L. 99–521, §9(b)(1), (2), Oct. 22, 1986, 100 Stat. 2997, related to service of household goods freight forwarders.

Section 11128, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1425, related to war emergencies and embargoes imposed by carriers. See section 11124 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11121, 11901 of this title.

SUBCHAPTER III—REPORTS AND RECORDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 11901, 11903 of this title.

§11141. Definitions

In this subchapter—

(1) the terms ''rail carrier'' and ''lessor'' include a receiver or trustee of a rail carrier and lessor, respectively;

(2) the term ''lessor'' means a person owning a railroad that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Board under this part; and

(3) the term ''association'' means an organization maintained by or in the interest of a group of rail carriers providing transportation or service subject to the jurisdiction of the Board under this part that performs a service, or engages in activities, related to transportation under this part.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

PRIOR PROVISIONS

A prior section 11141, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1425; Pub. L. 99–521, §9(c), Oct. 22, 1986, 100 Stat. 2997, defined terms for purposes of former sections 11141 to 11145 of this title, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 11141, 14121, and 15721 of this title.

§11142. Uniform accounting system

The Board may prescribe a uniform accounting system for classes of rail carriers providing transportation subject to the jurisdiction of the Board under this part. To the maximum extent practicable, the Board shall conform such system to generally accepted accounting principles, and shall administer this subchapter in accordance with such principles.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

PRIOR PROVISIONS

A prior section 11142, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1425; Pub. L. 96–448, title III, §301, Oct. 14, 1980, 94 Stat. 1934, related to uniform accounting system, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§11143. Depreciation charges

The Board shall, for a class of rail carriers providing transportation subject to its jurisdiction under this part, prescribe, and change when necessary, those classes of property for which depreciation charges may be included under operating expenses and a rate of depreciation that may be charged to a class of property. The Board may classify those rail carriers for purposes of this section. A rail carrier for whom depreciation charges and rates of depreciation are in effect under this section for any class of property may not—

(1) charge to operating expenses a depreciation charge on a class of property other than that prescribed by the Board;

(2) charge another rate of depreciation; or

(3) include other depreciation charges in operating expenses.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 834.)

PRIOR PROVISIONS

A prior section 11143, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1426, related to depreciation charges, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§11144. Records: form; inspection; preservation

(a) The Board may prescribe the form of records required to be prepared or compiled under this subchapter—

(1) by rail carriers and lessors, including records related to movement of traffic and receipts and expenditures of money; and

(2) by persons furnishing cars to or for a rail carrier providing transportation subject to the jurisdiction of the Board under this part to the extent related to those cars or that service.

(b) The Board, or an employee designated by the Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a rail carrier or lessor; and

(2) inspect and copy any record of—

(A) a rail carrier, lessor, or association;

(B) a person controlling, controlled by, or under common control with a rail carrier if the Board considers inspection relevant to that person's relation to, or transaction with, that rail carrier; and

(C) a person furnishing cars to or for a rail carrier if the Board prescribed the form of that record.

(c) The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 835.)

PRIOR PROVISIONS

A prior section 11144, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1426; Pub. L. 96–296, §24(c), July 1, 1980, 94 Stat. 816, related to form, inspection, and preservation of records, prior to the general amendment of this sub-

title by Pub. L. 104–88, § 102(a). See sections 11144, 14122, and 15722 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11901, 11904 of this title.

§ 11145. Reports by rail carriers, lessors, and associations

(a) The Board may require—

(1) rail carriers, lessors, and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it; and

(2) a person furnishing cars to a rail carrier to file reports with the Board containing answers to questions about those cars.

(b)(1) An annual report shall contain an account, in as much detail as the Board may require, of the affairs of the rail carrier, lessor, or association for the 12-month period ending on December 31 of each year.

(2) An annual report shall be filed with the Board by the end of the third month after the end of the year for which the report is made unless the Board extends the filing date or changes the period covered by the report. The annual report and, if the Board requires, any other report made under this section, shall be made under oath.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 835.)

PRIOR PROVISIONS

A prior section 11145, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1427; Pub. L. 96–296, § 5(b), July 1, 1980, 94 Stat. 796, related to reports by carriers, lessors, and associations, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 11145, 14123, and 15723 of this title.

SUBCHAPTER IV—RAILROAD COST ACCOUNTING

§ 11161. Implementation of cost accounting principles

The Board shall periodically review its cost accounting rules and shall make such changes in those rules as are required to achieve the regulatory purposes of this part. The Board shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes. To the maximum extent practicable, the Board shall conform such rules to generally accepted accounting principles.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 835.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11163 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11161, added Pub. L. 96–448, title III, § 302(a), Oct. 14, 1980, 94 Stat. 1934, related to Railroad Accounting Principles Board, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11162 of this title.

§ 11162. Rail carrier cost accounting system

(a) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Board under section 11161 of this title. A rail carrier may, after notifying the Board, make modifications in such system unless, within 60 days after the date of notification, the Board finds such modifications to be inconsistent with the rules promulgated by the Board under section 11161 of this title.

(b) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Board, the Board shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers, and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 836.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11164 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11162, added Pub. L. 96–448, title III, § 302(a), Oct. 14, 1980, 94 Stat. 1935; amended Pub. L. 103–272, § 4(j)(30), July 5, 1994, 108 Stat. 1370, related to cost accounting principles, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 11163. Cost availability

As required by the rules of the Board governing discovery in Board proceedings, rail carriers shall make relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Board proceeding in which such data are required.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 836.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11165 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11163, added Pub. L. 96–448, title III, § 302(a), Oct. 14, 1980, 94 Stat. 1936; amended Pub. L. 103–272, § 4(j)(31), July 5, 1994, 108 Stat. 1370, related to implementation of cost accounting principles, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 11161 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11904 of this title.

§ 11164. Accounting and cost reporting

To obtain expense and revenue information for regulatory purposes, the Board may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Board under this part, prescribing expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 836.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11166 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11164 to 11168 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11164, added Pub. L. 96–448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1936, related to certification of rail carrier cost accounting systems. See section 11162 of this title.

Section 11165, added Pub. L. 96–448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1937, related to cost data availability. See section 11163 of this title.

Section 11166, added Pub. L. 96–448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1937; amended Pub. L. 103–272, §4(j)(32), July 5, 1994, 108 Stat. 1370, related to accounting and cost reporting. See section 11164 of this title.

Section 11167, added Pub. L. 96–448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1938; amended Pub. L. 103–272, §4(j)(33), July 5, 1994, 108 Stat. 1370, related to reports to Congress by Railroad Accounting Principles Board.

Section 11168, added Pub. L. 96–448, title III, §302(a), Oct. 14, 1980, 94 Stat. 1938, authorized appropriations for fiscal years 1981 to 1983.

CHAPTER 113—FINANCE

SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

Sec.
11301. Equipment trusts: recordation; evidence of indebtedness.

SUBCHAPTER II—COMBINATIONS

11321. Scope of authority.
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11324. Consolidation, merger, and acquisition of control: conditions of approval.
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11326. Employee protective arrangements in transactions involving rail carriers.
11327. Supplemental orders.
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SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

§11301. Equipment trusts: recordation; evidence of indebtedness

(a) A mortgage (other than a mortgage under chapter 313 of title 46), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), intended for a use related to interstate commerce shall be filed with the Board in order to perfect the security interest that is the subject of such instrument. An assignment of a right or interest under one of those instruments and an amendment to that instrument or assignment including a release, discharge, or satisfaction of any part of it shall also be filed with the Board. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Board regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or recordation of those documents. This section does not change chapter 313 of title 46.

(b) The Board shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Board shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

(c) The Board may to the greatest extent practicable perform its functions under this section through contracts with private sector entities.

(d) A mortgage, lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), or any assignment thereof, which—

(1) is duly constituted under the laws of a country other than the United States; and

(2) relates to property that bears the reporting marks and identification numbers of any person domiciled in or corporation organized under the laws of such country,

shall be recognized with the same effect as having been filed under this section.

(e) Interests with respect to which documents are filed or recognized under this section are deemed perfected in all jurisdictions, and shall be governed by applicable State or foreign law in all matters not specifically governed by this section.

(f) The Board shall collect, maintain, and keep open for public inspection a railway equipment register consistent with the manner and format maintained by the Interstate Commerce Commission as of January 1, 1996.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 837; amended Pub. L. 104–287, §5(25), Oct. 11, 1996, 110 Stat. 3390.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11303 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11301, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1428; Pub. L. 103–429, §6(16), Oct. 31, 1994, 108 Stat. 4379, related to authority of certain carriers to issue securities and assume obligations and liabilities, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11302, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1430; Pub. L. 96–296, §18(a), July 1, 1980, 96 Stat. 811, provided that section 11301 of this title applied to

motor carriers and corporations subject to jurisdiction of Interstate Commerce Commission under former subchapter II of chapter 105 of this title, but did not apply to corporations under a certain capitalization, and that this section did not apply to Federal, State, or local governments, prior to repeal by Pub. L. 97–261, §§19(a), 31(a), Sept. 20, 1982, 96 Stat. 1121, 1129, effective on the 60th day after Sept. 20, 1982.

Prior sections 11303 and 11304 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11303, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1430; Pub. L. 103–272, §5(m)(30), July 5, 1994, 108 Stat. 1378, related to filing and recording of mortgages, leases, equipment trusts, and other agreements with Interstate Commerce Commission. See section 11301 of this title.

Section 11304, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1431; Pub. L. 96–258, §1(12), June 3, 1980, 94 Stat. 426, related to security interests in certain motor vehicles. See section 14301 of this title.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of the ICC Termination Act of 1995''.

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.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 726, 791.

SUBCHAPTER II—COMBINATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10906, 11702 of this title; title 45 section 662.

§ 11321. Scope of authority

(a) The authority of the Board under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

(b) A power granted under this subchapter to a carrier or corporation is in addition to and changes its powers under its corporate charter and under State law. Action under this subchapter does not establish or provide for establishing a corporation under the laws of the United States.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 838.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11341 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11321, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1432, related to limitations on ownership of certain water carriers, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 11322. Limitation on pooling and division of transportation or earnings

(a) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not agree or combine with another of those rail carriers to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section or section 11123 of this title. The Board may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

(1) will be in the interest of better service to the public or of economy of operation; and

(2) will not unreasonably restrain competition.

(b) The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.

(c) The Board may begin a proceeding under this section on its own initiative or on application.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 838.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11342 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11322, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1433, related to restrictions on officers and directors of carriers, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See section 11328 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11327 of this title.

§ 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, §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, §102(a).

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 333, 11324, 11327 of this title.

§11324. Consolidation, merger, and acquisition of control: conditions of approval

(a) The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority. When an application is filed with the Board, the Board shall notify the chief executive officer of each State in which property of the rail carriers involved in the proposed transaction is located and shall notify those rail carriers. The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.

(b) In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

(c) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Board may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that—

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Board shall, with respect to any application that is part of a plan or proposal developed under section 333(a)–(d) of this title, accord substantial weight to any recommendations of the Attorney General.

(e) No transaction described in section 11326(b) may have the effect of avoiding a collective bar-

gaining agreement or shifting work from a rail carrier with a collective bargaining agreement to a rail carrier without a collective bargaining agreement.

(f)(1) To the extent provided in this subsection, a proceeding under this subchapter relating to a transaction involving at least one Class I rail carrier shall not be considered an adjudication required by statute to be determined on the record after opportunity for an agency hearing, for the purposes of subchapter II of chapter 5 of title 5, United States Code.

(2) Ex parte communications, as defined in section 551(14) of title 5, United States Code, shall be permitted in proceedings described in paragraph (1) of this subsection, subject to the requirements of paragraph (3) of this subsection.

(3)(A) Any member or employee of the Board who makes or receives a written ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place the communication in the public docket of the proceeding.

(B) Any member or employee of the Board who makes or receives an oral ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place a written summary of the oral communication in the public docket of the proceeding.

(4) Nothing in this subsection shall be construed to require the Board or any of its members or employees to engage in any ex parte communication with any person. Nothing in this subsection or any other law shall be construed to limit the authority of the members or employees of the Board, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 839.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11344 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 333, 11325, 11326, 11327 of this title; title 45 section 1112.

§ 11325. Consolidation, merger, and acquisition of control: procedure

(a) The Board shall publish notice of the application under section 11324 in the Federal Register by the end of the 30th day after the application is filed with the Board. However, if the application is incomplete, the Board shall reject it by the end of that period. The order of rejection is a final action of the Board. The published notice shall indicate whether the application involves—

(1) the merger or control of at least two Class I railroads, as defined by the Board, to be decided within the time limits specified in subsection (b) of this section;

(2) transactions of regional or national transportation significance, to be decided within the time limits specified in subsection (c) of this section; or

(3) any other transaction covered by this section, to be decided within the time limits specified in subsection (d) of this section.

(b) If the application involves the merger or control of two or more Class I railroads, as defined by the Board, the following conditions apply:

(1) Written comments about an application may be filed with the Board within 45 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Attorney General and the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Board by the end of the 15th day after the date of receipt of the written comments.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 90th day after publication of notice under that subsection.

(3) The Board must conclude evidentiary proceedings by the end of 1 year after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(c) If the application involves a transaction other than the merger or control of at least two Class I railroads, as defined by the Board, which the Board has determined to be of regional or national transportation significance, the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 60th day after publication of notice under that subsection.

(3) The Board must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(d) For all applications under this section other than those specified in subsections (b) and (c) of this section, the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final de-

cision by the 45th day after the date on which it concludes the evidentiary proceedings.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 841.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11345 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11326, 11327 of this title; title 45 section 1112.

§11326. Employee protective arrangements in transactions involving rail carriers

(a) Except as otherwise provided in this section, when approval is sought for a transaction under sections 11324 and 11325 of this title, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under section 5(2)(f) of the Interstate Commerce Act before February 5, 1976, and the terms established under section 24706(c) of this title. Notwithstanding this part, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board (or if an employee was employed for a lesser period of time by the rail carrier before the action became effective, for that lesser period).

(b) When approval is sought under sections 11324 and 11325 for a transaction involving one Class II and one or more Class III rail carriers, there shall be an arrangement as required under subsection (a) of this section, except that such arrangement shall be limited to one year of severance pay, which shall not exceed the amount of earnings from the railroad employment of that employee during the 12-month period immediately preceding the date on which the application for approval of such transaction is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of that employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction. The parties may agree to terms other than as provided in this subsection.

(c) When approval is sought under sections 11324 and 11325 for a transaction involving only Class III rail carriers, this section shall not apply.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 842.)

REFERENCES IN TEXT

Section 5(2)(f) of the Interstate Commerce Act, referred to in subsec. (a), was classified to section 5(2)(f) of former Title 49, Transportation, prior to repeal and reenactment as section 11347 of this title by Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1439. Section 11347 of this title was subsequently omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11347 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5333, 10903, 11324, 11327 of this title.

§11327. Supplemental orders

When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 843.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11351 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§11328. Restrictions on officers and directors

(a) A person may hold the position of officer or director of more than one rail carrier only when authorized by the Board. The Board may authorize a person to hold the position of officer or director of more than one of those carriers when public or private interests will not be adversely affected.

(b) This section shall not apply to an individual holding the position of officer or director only of Class III rail carriers.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 843.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11322 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11341 to 11351 and 11361 to 11367 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11341, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1434; Pub. L. 97–261, §21(a), Sept. 20, 1982, 96 Stat. 1122, related to exclusive authority of Interstate Commerce Commission under former sections 11341 to 11351 of this title. See sections 11321, 14302, and 14303 of this title.

Section 11342, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1434; Pub. L. 96–296, §20, July 1, 1980, 94 Stat. 811; Pub. L. 96–454, §5(c), Oct. 15, 1980, 94 Stat. 2014, related to limitation on pooling and division of transportation or earnings. See sections 11322 and 14302 of this title.

Section 11343, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1434; Pub. L. 96–296, §18(b), July 1, 1980, 94 Stat. 811; Pub. L. 97–261, §21(b), Sept. 20, 1982, 96 Stat. 1122, related to consolidation, merger, and acquisition of control. See sections 11323 and 14303 of this title.

Section 11344, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1436; Pub. L. 96–448, title II, §228(a)–(c), Oct. 14, 1980, 94 Stat. 1931; Pub. L. 97–261, §21(f), (g), Sept. 20, 1982, 96 Stat. 1123; Pub. L. 98–216, §2(4), Feb. 14, 1984, 98 Stat. 5, related to general procedures and conditions of approval of consolidations, mergers, and acquisitions of control. See sections 11324 and 14303 of this title.

Section 11345, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1436; Pub. L. 96–448, title II, §228(d), Oct. 14, 1980, 94 Stat. 1932, related to rail carrier procedures in consolidations, mergers, and acquisitions of control. See section 11325 of this title.

Section 11345a, added Pub. L. 96–296, §27(a), July 1, 1980, 94 Stat. 819; amended Pub. L. 97–261, §21(c), (d), Sept. 20, 1982, 96 Stat. 1123, related to motor carrier procedures in consolidations, mergers, and acquisitions of control. See section 14303 of this title.

Section 11346, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1437; Pub. L. 97–449, § 5(g)(7), Jan. 12, 1983, 96 Stat. 2443, related to expedited rail carrier procedures in consolidations, mergers, and acquisitions of control.

Section 11347, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1439; Pub. L. 98–216, § 2(16), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103–272, § 5(m)(31), July 5, 1994, 108 Stat. 1378, related to employee protective arrangements in transactions involving rail carriers. See section 11326 of this title.

Section 11348, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1439; Pub. L. 96–454, § 8(b)(1), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97–261, § 19(b), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 97–449, § 5(g)(8), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98–554, title II, § 227(a)(3), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103–272, § 5(m)(32), July 5, 1994, 108 Stat. 1378; Pub. L. 103–429, § 6(17), Oct. 31, 1994, 108 Stat. 4379, related to Interstate Commerce Commission authority over noncarriers that acquire control of carriers. See section 14303 of this title.

Section 11349, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1439, related to temporary operating approval for transactions involving motor and water carriers. See section 14303 of this title.

Section 11350, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1440, related to responsibility of Secretary of Transportation in certain transactions.

Section 11351, added Pub. L. 96–258, § 1(13)(A), June 3, 1980, 94 Stat. 427, related to orders by Interstate Commerce Commission supplemental to orders made in proceedings under former sections 11342 to 11345 and 11347 of this title. See sections 11327 and 14303 of this title.

Section 11361, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1441; Pub. L. 97–449, § 5(g)(9), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98–216, § 2(17), Feb. 14, 1984, 98 Stat. 5, related to exclusive authority of Interstate Commerce Commission over financial structure of carriers.

Section 11362, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1441, related to criteria for approval and authority to make changes in carrier financial structure.

Section 11363, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1442, related to assent of holders of securities and certain other instruments to changes in carrier financial structure.

Section 11364, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1443, related to procedure for obtaining assents of security holders to changes in financial structure.

Section 11365, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1443, related to effect of change in financial structure of carrier on other persons.

Section 11366, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1443, related to reports by carriers making change in financial structure.

Section 11367, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1444; Pub. L. 98–216, § 2(18), (19), Feb. 14, 1984, 98 Stat. 5, related to application of certain other laws to proposed changes in financial structure of carriers.

CHAPTER 115—FEDERAL-STATE RELATIONS

Sec.
11501. Tax discrimination against rail transportation property.
11502. Withholding State and local income tax by rail carriers.

§ 11501. Tax discrimination against rail transportation property

(a) In this section—

(1) the term ''assessment'' means valuation for a property tax levied by a taxing district;

(2) the term ''assessment jurisdiction'' means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(3) the term ''rail transportation property'' means property, as defined by the Board, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Board under this part; and

(4) the term ''commercial and industrial property'' means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 843.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11503 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11501, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1444; Pub. L. 96–448, title II, §214(a)–(c)(1), Oct. 14, 1980, 94 Stat. 1913, 1915; Pub. L. 97–261, §17(a), Sept. 20, 1982, 96 Stat. 1117; Pub. L. 99–521, §11(a), Oct. 22, 1986, 100 Stat. 2997; Pub. L. 103–272, §4(j)(34), July 5, 1994, 108 Stat. 1370; Pub. L. 103–305, title VI, §601(c), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103–311, title II, §211(b)(2), Aug. 26, 1994, 108 Stat. 1689, related to Interstate Commerce Commission authority over intrastate transportation, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See section 14501 of this title.

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.

§11502. Withholding State and local income tax by rail carriers

(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Board under this part to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

(b) A rail carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 844.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11504 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11502 to 11507 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11502, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1445, related to conferences and joint hearings with State authorities.

Section 11503, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1445, related to tax discrimination against rail transportation property. See section 11501 of this title.

Section 11503a, added Pub. L. 96–296, §31(a)(1), July 1, 1980, 94 Stat. 823; amended Pub. L. 97–261, §20, Sept. 20, 1982, 96 Stat. 1122, related to tax discrimination against motor carrier transportation property. See section 14502 of this title.

Section 11504, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1446; Pub. L. 97–261, §29(d), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 101–322, §7, July 6, 1990, 104 Stat. 296; Pub. L. 103–272, §5(m)(33), July 5, 1994, 108 Stat. 1378, related to withholding State and local income tax by certain carriers. See sections 11502 and 14503 of this title.

Section 11505, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1448; Pub. L. 99–521, §11(b), Oct. 22, 1986, 100 Stat. 2998, related to State action to enjoin rail carriers from certain actions.

Section 11506, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1448; Pub. L. 102–240, title IV, §4005, Dec. 18, 1991, 105 Stat. 2146, related to registration of motor carriers by a State. See section 14504 of this title.

Section 11507, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1449; Pub. L. 98–473, title II, §233, Oct. 12, 1984, 98 Stat. 2031, related to prison-made property governed by State law.

CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec.
11701. General authority.
11702. Enforcement by the Board.
11703. Enforcement by the Attorney General.
11704. Rights and remedies of persons injured by rail carriers.
11705. Limitation on actions by and against rail carriers.
11706. Liability of rail carriers under receipts and bills of lading.
11707. Liability when property is delivered in violation of routing instructions.

§11701. General authority

(a) Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part.

(b) A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.

(c) A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 845.)

PRIOR PROVISIONS

A prior section 11701, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1449; Pub. L. 96–296, §26(a), July 1, 1980, 94 Stat. 818; Pub. L. 98–554, title II, §226(c)(4), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 99–521, §12(a), Oct. 22, 1986, 100 Stat. 2998; Pub. L. 100–690, title IX, §9111(i), Nov. 18, 1988, 102 Stat. 4534; Pub. L. 103–272, §5(m)(34), July 5, 1994, 108 Stat. 1378, related to general authority of Interstate Commerce Commission to enforce this subtitle, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 11701, 14701, and 15901 of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10704, 11103, 11704 of this title.

§11702. Enforcement by the Board

The Board may bring a civil action—

(1) to enjoin a rail carrier from violating sections 10901 through 10906 of this title, or a regulation prescribed or order or certificate issued under any of those sections;

(2) to enforce subchapter II of chapter 113 of this title and to compel compliance with an order of the Board under that subchapter; and

(3) to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 845.)

PRIOR PROVISIONS

A prior section 11702, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1450; Pub. L. 96–296, §§ 15(c), 16(c), July 1, 1980, 94 Stat. 809, 810; Pub. L. 97–261, § 25(e), Sept. 20, 1982, 96 Stat. 1125; Pub. L. 98–554, title II, § 226(c)(5), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 100–690, title IX, § 9111(j), Nov. 18, 1988, 102 Stat. 4534, related to authority of Interstate Commerce Commission to bring a civil action to enforce various provisions of this subtitle, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 11702, 14702, and 15902 of this title.

§ 11703. Enforcement by the Attorney General

(a) The Attorney General may, and on request of the Board shall, bring court proceedings to enforce this part, or a regulation or order of the Board or certificate issued under this part, and to prosecute a person violating this part or a regulation or order of the Board or certificate issued under this part.

(b) The United States Government may bring a civil action on behalf of a person to compel a rail carrier providing transportation subject to the jurisdiction of the Board under this part to provide that transportation to that person in compliance with this part at the same rate charged, or on conditions as favorable as those given by the rail carrier, for like traffic under similar conditions to another person.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 845.)

PRIOR PROVISIONS

A prior section 11703, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1450, related to authority of Attorney General and United States Government to bring civil actions to enforce this subtitle, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 11703, 14703, and 15903 of this title.

§ 11704. Rights and remedies of persons injured by rail carriers

(a) A person injured because a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part does not obey an order of the Board, except an order for the payment of money, may bring a civil action in a United States District Court to enforce that order under this subsection.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part. A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable to a person for amounts charged that exceed the applicable rate for the transportation.

(c)(1) A person may file a complaint with the Board under section 11701(b) of this title or bring a civil action under subsection (b) of this section to enforce liability against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(2) When the Board makes an award under subsection (b) of this section, the Board shall order the rail carrier to pay the amount awarded by a specific date. The Board may order a rail carrier providing transportation subject to the jurisdiction of the Board under this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the rail carrier does not pay the amount awarded by the date payment was ordered to be made.

(d)(1) When a person begins a civil action under subsection (b) of this section to enforce an order of the Board requiring the payment of damages by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the text of the order of the Board must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district—

(A) in which the plaintiff resides;

(B) in which the principal operating office of the rail carrier is located; or

(C) through which the railroad line of that carrier runs.

In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the rail carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(3) The district court shall award a reasonable attorney's fee as a part of the damages for which a rail carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 846.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11704, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1451, related to actions by private persons to enjoin abandonment of service, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11705 of this title.

§11705. Limitation on actions by and against rail carriers

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

(b) A person must begin a civil action to recover overcharges under section 11704(b) of this title within 3 years after the claim accrues, whether or not a complaint is filed under section 11704(c)(1).

(c) A person must file a complaint with the Board to recover damages under section 11704(b) of this title within 2 years after the claim accrues.

(d) The limitation period under subsection (b) of this section is extended for 6 months from the time written notice is given to the claimant by the rail carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the rail carrier within that limitation period. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the rail carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) A person must begin a civil action to enforce an order of the Board against a rail carrier for the payment of money within one year after the date the order required the money to be paid.

(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

(1) payment of the rate for the transportation or service involved;

(2) subsequent refund for overpayment of that rate; or

(3) deduction made under section 3726 of title 31, whichever is later.

(g) A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the rail carrier.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 847.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11705, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1451; Pub. L. 99–521, §12(b), Oct. 22, 1986, 100 Stat. 2998, related to rights and remedies of persons injured by certain carriers, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 11704, 14704, and 15904 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10743 of this title.

§11706. Liability of rail carriers under receipts and bills of lading

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That rail carrier and any other carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Board under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by—

(1) the receiving rail carrier;

(2) the delivering rail carrier; or

(3) another rail carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading.

Failure to issue a receipt or bill of lading does not affect the liability of a rail carrier. A delivering rail carrier is deemed to be the rail carrier performing the line-haul transportation nearest the destination but does not include a rail carrier providing only a switching service at the destination.

(b) The rail carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the rail carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c)(1) A rail carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, or rule in violation of this section is void.

(2) A rail carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on trains carrying passengers.

(3) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish rates for transportation of property under which—

(A) the liability of the rail carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier; or

(B) specified amounts are deducted, pursuant to a written agreement between the shipper and the carrier, from any claim against the carrier with respect to the transportation of such property.

(d)(1) A civil action under this section may be brought in a district court of the United States or in a State court.

(2)(A) A civil action under this section may only be brought—

(i) against the originating rail carrier, in the judicial district in which the point of origin is located;

(ii) against the delivering rail carrier, in the judicial district in which the principal place of business of the person bringing the action is located if the delivering carrier operates a railroad or a route through such judicial district, or in the judicial district in which the point of destination is located; and

(iii) against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(B) In this section, ''judicial district'' means (i) in the case of a United States district court, a judicial district of the United States, and (ii) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) A rail carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(2) communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 847.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11707 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11706, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1452; Pub. L. 97–258, § 3(n), Sept. 13, 1982, 96 Stat. 1066; Pub. L. 99–521, § 12(c), Oct. 22, 1986, 100 Stat. 2998; Pub. L. 103–180, § 3, Dec. 3, 1993, 107 Stat. 2049; Pub. L. 103–429, § 6(18), Oct. 31, 1994, 108 Stat. 4379, related to limitation on actions by and against common carriers, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See sections 11705, 14705, and 15905 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10502 of this title; title 28 sections 1337, 1445.

§ 11707. Liability when property is delivered in violation of routing instructions

(a)(1) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part diverts or delivers property to another rail carrier in violation of routing instructions in the bill of lading, both of those rail carriers are jointly and severally liable to the rail carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.

(2) A rail carrier is not liable under paragraph (1) of this subsection when it diverts or delivers property in compliance with an order or regulation of the Board.

(3) A rail carrier to whom property is transported is not liable under this subsection if it shows that it had no notice of the routing instructions before transporting the property. The burden of proving lack of notice is on that rail carrier.

(b) The court shall award a reasonable attorney's fee to the plaintiff in a judgment against the defendant rail carrier under subsection (a) of this section. The court shall tax and collect that fee as a part of the costs of the action.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 849.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11710 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Prior sections 11707 to 11712 were omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Section 11707, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1453; Pub. L. 96–258, § 1(14), June 3, 1980, 94 Stat. 427; Pub. L. 96–296, § 26(b), July 1, 1980, 94 Stat. 818; Pub. L. 96–448, title II, § 211(c), Oct. 14, 1980, 94 Stat. 1911; Pub. L. 99–521, § 12(d), Oct. 22, 1986, 100 Stat. 2998; Pub. L. 100–690, title IX, § 9114, Nov. 18, 1988, 102 Stat. 4535, related to liability of common carriers under receipts and bills of lading. See sections 11706, 14706, and 15906 of this title.

Section 11708, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1454; Pub. L. 99–521, § 12(e)(1), (2), Oct. 22, 1986, 100 Stat. 2998, related to private enforcement of motor carrier and household goods freight forwarder licensing requirements. See section 14707 of this title.

Section 11709, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1454, related to liability for issuance of securities by certain carriers.

Section 11710, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1455, related to liability when property is delivered in violation of routing instructions. See section 11707 of this title.

Section 11711, added Pub. L. 96–454, § 7(a)(1), Oct. 15, 1980, 94 Stat. 2016; amended Pub. L. 97–261, § 6(d)(2), Sept. 20, 1982, 96 Stat. 1107, related to dispute settlement program for household goods carriers. See section 14708 of this title.

Section 11712, added Pub. L. 103–180, § 4(a), Dec. 3, 1993, 107 Stat. 2049, related to tariff reconciliation rules for motor common carriers of property. See section 14709 of this title.

CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

Sec.
11901. General civil penalties.
11902. Interference with railroad car supply.
11903. Record keeping and reporting violations.

Sec.
11904. Unlawful disclosure of information.
11905. Disobedience to subpoenas.
11906. General criminal penalty when specific penalty not provided.
11907. Punishment of corporation for violations committed by certain individuals.
11908. Relation to other Federal criminal penalties.

§11901. General civil penalties

(a) Except as otherwise provided in this section, a rail carrier providing transportation subject to the jurisdiction of the Board under this part, an officer or agent of that rail carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, or a receiver or trustee of that rail carrier, violating a regulation or order of the Board under section 11124(a)(2) or (b) of this title is liable to the United States Government for a civil penalty of $500 for each violation and for $25 for each day the violation continues.

(c) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title or of a requirement or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than $5,000.

(d) A rail carrier, receiver, or operating trustee violating an order or direction of the Board under section 11123 or 11124(a)(1) of this title is liable to the United States Government for a civil penalty of at least $100 but not more than $500 for each violation and for $50 for each day the violation continues.

(e)(1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Board a record concerning transportation subject to the jurisdiction of the Board under this part that does not make, prepare, preserve, or submit that record as required under that subchapter, is liable to the United States Government for a civil penalty of $500 for each violation.

(2) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, and a lessor, receiver, or trustee of that rail carrier, violating section 11144(b)(1) of this title, is liable to the United States Government for a civil penalty of $100 for each violation.

(3) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that rail carrier, a person furnishing cars, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States Government for a civil penalty of $100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(f) Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 849.)

PRIOR PROVISIONS

A prior section 11901, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1455; Pub. L. 96–454, §8(a), Oct. 15, 1980, 94 Stat. 2019; Pub. L. 96–510, title III, §306(c), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 97–261, §23, Sept. 20, 1982, 96 Stat. 1124; Pub. L. 98–554, title II, §§226(c)(6), 227(a)(1), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103–180, §§6(b), 7(c), Dec. 3, 1993, 107 Stat. 2051, 2052, related to general civil penalties, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See sections 11901, 14901, and 16101 of this title.

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.

§11902. Interference with railroad car supply

(a) A person that offers or gives anything of value to another person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board under this part intending to influence an action of that other person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of that other person, shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

(b) A person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board under this part that solicits, accepts, or receives anything of value—

(1) intending to be influenced by it in an action of that person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property; or

(2) because of the action of that person,

shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 850.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11907 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11902 and 11902a were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11902, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1457, related to civil penalties for accepting rebates from common carriers. See section 14902 of this title.

Section 11902a, added Pub. L. 96–296, §15(b)(1), July 1, 1980, 94 Stat. 809, related to penalties for violations of rules relating to loading and unloading motor vehicles. See section 14905 of this title.

§11903. Record keeping and reporting violations

A person required to make a report to the Board, or make, prepare, or preserve a record, under subchapter III of chapter 111 of this title about transportation subject to the jurisdiction of the Board under this part that knowingly and willfully—

(1) makes a false entry in the report or record;

(2) destroys, mutilates, changes, or by another means falsifies the record;

(3) does not enter business related facts and transactions in the record;

(4) makes, prepares, or preserves the record in violation of a regulation or order of the Board; or

(5) files a false report or record with the Board,

shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 851.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11909 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11903, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1457, related to rate, discrimination, and tariff violations, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 14903 of this title.

§ 11904. Unlawful disclosure of information

(a) A—

(1) rail carrier providing transportation subject to the jurisdiction of the Board under this part, or an officer, agent, or employee of that rail carrier, or another person authorized to receive information from that rail carrier, that knowingly discloses to another person, except the shipper or consignee; or

(2) a[1] person who solicits or knowingly receives,

information described in subsection (b) without the consent of the shipper or consignee shall be fined not more than $1,000.

(b) The information referred to in subsection (a) is information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation provided under this part, or information about the contents of a contract authorized under section 10709 of this title, that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.

(c) This part does not prevent a rail carrier providing transportation subject to the jurisdiction of the Board under this part from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another rail carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(d) An employee of the Board delegated to make an inspection or examination under section 11144 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined not more than $500, imprisoned for not more than 6 months, or both.

(e) A person that knowingly discloses confidential data made available to such person under section 11163 of this title by a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall be fined not more than $50,000.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 851.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11910 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11904, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1457; Pub. L. 99–521, § 13(a), Oct. 22, 1986, 100 Stat. 2998, related to additional rate and discrimination violations, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 14904 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 333 of this title.

§ 11905. Disobedience to subpoenas

A person not obeying a subpoena or requirement of the Board to appear and testify or produce records shall be fined at least $100 but not more than $5,000, imprisoned for not more than one year, or both.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 852.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11913 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11905, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1459; Pub. L. 97–261, § 29(e), Sept. 20, 1982, 96 Stat. 1128, related to transportation of passengers without charge, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 11906. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a rail carrier providing transportation subject to the jurisdiction of the Board under this part, and when that rail carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined not more than $5,000. The person may be imprisoned for not more than 2 years in addition to being fined under this section. A separate violation occurs each day a violation of this title continues.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 852.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

A prior section 11906, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1459, related to evasion of regulation of motor carriers and brokers, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a). See section 14906 of this title.

[1] So in original. The word "a" probably should not appear.

§11907. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that rail carrier are considered to be the actions and omissions of that rail carrier as well as that individual.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 852.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11915 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A prior section 11907, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1459, related to interference with railroad car supply, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a). See section 11902 of this title.

§11908. Relation to other Federal criminal penalties

Notwithstanding section 3571 of title 18, United States Code, the criminal penalties provided for in this chapter are the exclusive criminal penalties for violations of this part.

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 852.)

PRIOR PROVISIONS

Prior sections 11908 to 11917 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 11908, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1459; Pub. L. 99–521, §13(b)(1), (2), Oct. 22, 1986, 100 Stat. 2998, 2999, related to penalty for abandonment of service by household goods freight forwarders.

Section 11909, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1460; Pub. L. 96–258, §1(15), June 3, 1980, 94 Stat. 427; Pub. L. 97–424, title IV, §427(a), Jan. 6, 1983, 96 Stat. 2168; Pub. L. 98–216, §2(20), Feb. 14, 1984, 98 Stat. 6; Pub. L. 99–521, §13(c), Oct. 22, 1986, 100 Stat. 2999; Pub. L. 103–180, §6(c), Dec. 3, 1993, 107 Stat. 2051; Pub. L. 103–272, §4(j)(35), July 5, 1994, 108 Stat. 1370, related to penalties for record keeping and reporting violations. See sections 11903, 14907, and 16102 of this title.

Section 11910, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1461; Pub. L. 96–448, title III, §303(b), Oct. 14, 1980, 94 Stat. 1938; Pub. L. 99–521, §13(d), Oct. 22, 1986, 100 Stat. 2999, related to penalties for unlawful disclosure of information. See sections 11904, 14908, and 16103 of this title.

Section 11911, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1462; Pub. L. 97–261, §19(c), Sept. 20, 1982, 96 Stat. 1121, related to penalties for violations involving issuance of securities, disposition of funds, and restrictions on ownership.

Section 11912, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1462; Pub. L. 96–258, §1(13)(C), June 3, 1980, 94 Stat. 427, related to penalties for violations by persons, not carriers, involving consolidations, mergers, and acquisitions of control.

Section 11913, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1463, related to penalty for disobedience to subpenas. See sections 11905, 14909, and 16104 of this title.

Section 11913a, added Pub. L. 96–448, title III, §303(a)(1), Oct. 14, 1980, 94 Stat. 1938, related to penalty for accounting principles violations.

Section 11914, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1463; Pub. L. 96–258, §1(16), June 3, 1980, 94 Stat. 427; Pub. L. 97–424, title IV, §427(b), Jan. 6, 1983, 96 Stat. 2168; Pub. L. 98–216, §2(20), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–554, title II, §226(c)(7), Oct. 30, 1984, 98 Stat. 2852, related to general criminal penalty when specific penalty not provided. See sections 11906, 14910, and 16105 of this title.

Section 11915, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1464, related to punishment of corporation for violations committed by certain individuals. See sections 11907, 14911, and 16106 of this title.

Section 11916, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1464, related to conclusiveness of rates in certain prosecutions. See section 14913 of this title.

Section 11917, added Pub. L. 96–454, §9(a), Oct. 15, 1980, 94 Stat. 2021, related to weight-bumping in household goods transportation. See section 14912 of this title.

PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

AMENDMENTS

1996—Pub. L. 104–287, §5(26)(A), Oct. 11, 1996, 110 Stat. 3390, made technical amendment to part heading.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 28 section 2342; title 29 section 1841.

CHAPTER 131—GENERAL PROVISIONS

Sec.
13101. Transportation policy.
13102. Definitions.
13103. Remedies as cumulative.

AMENDMENTS

1996—Pub. L. 104–287, §5(26)(B), Oct. 11, 1996, 110 Stat. 3390, made technical amendment to heading.

§13101. Transportation policy

(a) IN GENERAL.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

(G) provide and maintain service to small communities and small shippers and intrastate bus services;

(H) provide and maintain commuter bus operations;

(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;

(J) promote greater participation by minorities in the motor carrier system;

(K) promote intermodal transportation;

(3) in overseeing transportation by motor carrier of passengers—

(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;

(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and

(C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and

(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

(b) ADMINISTRATION TO CARRY OUT POLICY.—This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 853.)

REFERENCES IN TEXT

The Bus Regulatory Reform Act of 1982, referred to in subsec. (a)(3)(C), is Pub. L. 97–261, Sept. 20, 1982, 96 Stat. 1102. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 10101 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 13506, 13541, 13703 of this title; title 33 section 1803.

§ 13102. Definitions

In this part, the following definitions shall apply:

(1) BOARD.—The term ''Board'' means the Surface Transportation Board.

(2) BROKER.—The term ''broker'' means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) CARRIER.—The term ''carrier'' means a motor carrier, a water carrier, and a freight forwarder.

(4) CONTRACT CARRIAGE.—The term ''contract carriage'' means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) CONTROL.—The term ''control'', when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

(6) FOREIGN MOTOR CARRIER.—The term ''foreign motor carrier'' means a person (including a motor carrier of property but excluding a motor private carrier)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

(7) FOREIGN MOTOR PRIVATE CARRIER.—The term ''foreign motor private carrier'' means a person (including a motor private carrier but excluding a motor carrier of property)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

(8) FREIGHT FORWARDER.—The term ''freight forwarder'' means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide trans-

portation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

(9) HIGHWAY.—The term ''highway'' means a road, highway, street, and way in a State.

(10) HOUSEHOLD GOODS.—The term ''household goods'', as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling, or

(B) arranged and paid for by another party.

(11) HOUSEHOLD GOODS FREIGHT FORWARDER.—The term ''household goods freight forwarder'' means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

(12) MOTOR CARRIER.—The term ''motor carrier'' means a person providing motor vehicle transportation for compensation.

(13) MOTOR PRIVATE CARRIER.—The term ''motor private carrier'' means a person, other than a motor carrier, transporting property by motor vehicle when—

(A) the transportation is as provided in section 13501 of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

(14) MOTOR VEHICLE.—The term ''motor vehicle'' means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

(15) NONCONTIGUOUS DOMESTIC TRADE.—The term ''noncontiguous domestic trade'' means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(16) PERSON.—The term ''person'', in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(17) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(18) STATE.—The term ''State'' means the 50 States of the United States and the District of Columbia.

(19) TRANSPORTATION.—The term ''transportation'' includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(20) UNITED STATES.—The term ''United States'' means the States of the United States and the District of Columbia.

(21) VESSEL.—The term ''vessel'' means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(22) WATER CARRIER.—The term ''water carrier'' means a person providing water transportation for compensation.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 854; amended Pub. L. 104–287, § 5(27), Oct. 11, 1996, 110 Stat. 3390.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287, § 5(27)(A)

This amends 49:13102(4)(A) by setting out the effective date of the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803) and the day before that date.

PUB. L. 104–287, § 5(27)(B)

This amends 49:13102(4)(B) for clarity and consistency.

REFERENCES IN TEXT

Section 10923, referred to in par. (4)(A), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10102 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Par. (4)(A). Pub. L. 104–287, § 5(27)(A), substituted ''January 1, 1996'' for ''the effective date of this section'' and ''December 31, 1995'' for ''the day before the effective date of this section''.

Par. (4)(B). Pub. L. 104–287, § 5(27)(B), substituted ''after December 31, 1995'' for ''on or after such date''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 5102, 5901, 14101, 14706, of this title; title 18 section 921; title 29 section 186; title 39 section 5201; title 42 section 4917.

§ 13103. Remedies as cumulative

Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 856.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10103 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 133—ADMINISTRATIVE PROVISIONS

Sec.
13301. Powers.
13302. Intervention.
13303. Service of notice in proceedings.
13304. Service of process in court proceedings.

§ 13301. Powers

(a) GENERAL POWERS OF SECRETARY.—Except as otherwise specified, the Secretary shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

(b) OBTAINING INFORMATION.—The Secretary may obtain from carriers providing, and brokers for, transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker, information the Secretary decides is necessary to carry out this part.

(c) SUBPOENA POWER.—

(1) BY SECRETARY.—The Secretary may subpoena witnesses and records related to a proceeding under this part from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding under this part, may petition a court of the United States to enforce that subpoena.

(2) ENFORCEMENT.—The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) TESTIMONY OF WITNESSES.—

(1) PROCEDURE FOR TAKING TESTIMONY.—In a proceeding under this part, the Secretary may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending under this part may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) SUBPOENA.—If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Secretary may subpoena the witness to take a deposition, produce the records, or both.

(3) DEPOSITIONS.—A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) NOTICE OF DEPOSITION.—Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) TRANSCRIPT.—The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) FOREIGN COUNTRY.—The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. A deposition shall be filed with the Secretary promptly.

(e) WITNESS FEES.—Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

(f) POWERS OF BOARD.—For those provisions of this part that are specified to be carried out by the Board, the Board shall have the same powers as the Secretary has under this section.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 856.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10321 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

§ 13302. Intervention

Under regulations of the Secretary, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this part related to transportation subject to jurisdiction under subchapter I of chapter 135 shall be given to interested persons.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 858.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10328 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13303. Service of notice in proceedings

(a) AGENTS FOR SERVICE OF PROCESS.—A carrier, a broker, or a freight forwarder providing transportation or service subject to jurisdiction under chapter 135 shall designate, in writing, an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Secretary may be made.

(b) FILING WITH STATE.—A motor carrier providing transportation under this part shall also

file the designation with the appropriate authority of each State in which it operates. The designation may be changed at any time in the same manner as originally made.

(c) NOTICE.—A notice to a motor carrier, freight forwarder, or broker shall be served personally or by mail on the motor carrier, freight forwarder, or broker or on its designated agent. Service by mail on the designated agent shall be made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier, freight forwarder, or broker does not have a designated agent, service may be made by posting a copy of the notice at the headquarters of the Department of Transportation.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 858.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10329 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13906 of this title.

§ 13304. Service of process in court proceedings

(a) DESIGNATION OF AGENT.—A motor carrier or broker providing transportation subject to jurisdiction under chapter 135, including a motor carrier or broker operating within the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. The designation shall be in writing and filed with the Department of Transportation and each State in which the carrier operates may require that an additional designation be filed with it. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

(b) CHANGE.—A designation under this section may be changed at any time in the same manner as originally made.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 858.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10330 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13906, 13908 of this title.

CHAPTER 135—JURISDICTION

SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION

Sec.
13501. General jurisdiction.
13502. Exempt transportation between Alaska and other States.
13503. Exempt motor vehicle transportation in terminal areas.
13504. Exempt motor carrier transportation entirely in one State.
13505. Transportation furthering a primary business.
13506. Miscellaneous motor carrier transportation exemptions.
13507. Mixed loads of regulated and unregulated property.
13508. Limited authority over cooperative associations.

SUBCHAPTER II—WATER CARRIER TRANSPORTATION

13521. General jurisdiction.

SUBCHAPTER III—FREIGHT FORWARDER SERVICE

13531. General jurisdiction.

SUBCHAPTER IV—AUTHORITY TO EXEMPT

13541. Authority to exempt transportation or services.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 13102, 13303, 13304, 13701, 13702, 13703, 14101, 14121, 14704, 14705, 14902, 14903, 14908, 14911 of this title.

SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13302, 13703, 13704, 13705, 13708, 13709, 13711, 13901, 13902, 13904, 14102, 14103, 14104, 14302, 14303, 14501, 14502, 14503, 14504, 14702, 14706, 14708, 14709, 14901, 14904, 14907, 14908, 14910, 14912, 30103, 30166, 31503 of this title; title 15 section 5904.

§ 13501. General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

(1) between a place in—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 859.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10521 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13102, 13502, 13711, 14504, 31501, 31502 of this title.

§ 13502. Exempt transportation between Alaska and other States

To the extent that transportation by a motor carrier between a place in Alaska and a place in another State under section 13501 is provided in a foreign country—

(1) neither the Secretary nor the Board has jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country; but

(2) the motor carrier, as a condition of providing transportation in the United States, shall comply, with respect to all transportation provided between Alaska and the other State, with the requirements of this part related to rates and practices applicable to the transportation.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 859.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10522 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13908, 31502 of this title.

§ 13503. Exempt motor vehicle transportation in terminal areas

(a) TRANSPORTATION BY CARRIERS.—

(1) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery;

(B) is provided by—

(i) a rail carrier subject to jurisdiction under chapter 105;

(ii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

(iii) a freight forwarder subject to jurisdiction under subchapter III of this chapter; and

(C) is incidental to transportation or service provided by the carrier or freight forwarder that is subject to jurisdiction under chapter 105 of this title or under subchapter II or III of this chapter.

(2) APPLICABILITY OF OTHER PROVISIONS.—Transportation exempt from jurisdiction under paragraph (1) of this subsection is subject to jurisdiction under chapter 105 when provided by such a rail carrier, under subchapter II of this chapter when provided by such a water carrier, and under subchapter III of this chapter when provided by such a freight forwarder.

(b) TRANSPORTATION BY AGENT.—

(1) IN GENERAL.—Except to the extent provided by paragraph (2) of this subsection, neither the Secretary nor the Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery; and

(B) is provided by a person as an agent or under other arrangement for—

(i) a rail carrier subject to jurisdiction under chapter 105 of this title;

(ii) a motor carrier subject to jurisdiction under this subchapter;

(iii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

(iv) a freight forwarder subject to jurisdiction under subchapter III of this chapter.

(2) TREATMENT OF TRANSPORTATION BY PRINCIPAL.—Transportation exempt from jurisdiction under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the freight forwarder for whom the transportation was provided and is subject to jurisdiction under chapter 105 of this title when provided for such a rail carrier, under this subchapter when provided for such a motor carrier, under subchapter II of this chapter when provided for such a water carrier, and under subchapter III of this chapter when provided for such a freight forwarder.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 860.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10523 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13504, 13908 of this title.

§ 13504. Exempt motor carrier transportation entirely in one State

Neither the Secretary nor the Board has jurisdiction under this subchapter over transportation, except transportation of household goods, by a motor carrier operating solely within the State of Hawaii. The State of Hawaii may regulate transportation exempt from jurisdiction under this section and, to the extent provided by a motor carrier operating solely within the State of Hawaii, transportation exempt under section 13503 of this title.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 860.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10525 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13505. Transportation furthering a primary business

(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over the transportation of property by motor vehicle when—

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

(b) CORPORATE FAMILIES.—

(1) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over transportation of property by motor vehicle for compensation provided by a person who is a member of a corporate family for other members of such corporate family.

(2) DEFINITION.—In this section, ''corporate family'' means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a 100 percent interest.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 861.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10524 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13506. Miscellaneous motor carrier transportation exemptions

(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over—

(1) a motor vehicle transporting only school children and teachers to or from school;

(2) a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places;

(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;

(4) a motor vehicle controlled and operated by a farmer and transporting—

(A) the farmer's agricultural or horticultural commodities and products; or

(B) supplies to the farm of the farmer;

(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))[1] or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State—

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and

(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

(6) transportation by motor vehicle of—

(A) ordinary livestock;

(B) agricultural or horticultural commodities (other than manufactured products thereof);

(C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted);

(D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, or byproducts thereof not intended for human consumption, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products; and

(E) livestock and poultry feed and agricultural seeds and plants, if such products (excluding products otherwise exempt under this paragraph) are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;

(7) a motor vehicle used only to distribute newspapers;

(8)(A) transportation of passengers by motor vehicle incidental to transportation by aircraft;

(B) transportation of property (including baggage) by motor vehicle as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier or (to the extent so agreed by the United States and approved by the Secretary) by a foreign air carrier; or

(C) transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper;

(9) the operation of a motor vehicle in a national park or national monument;

(10) a motor vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work;

(11) transportation of used pallets and used empty shipping containers (including intermodal cargo containers), and other used shipping devices (other than containers or devices used in the transportation of motor vehicles or parts of motor vehicles);

(12) transportation of natural, crushed, vesicular rock to be used for decorative purposes;

[1] So in original. Probably should be followed by another closing parenthesis.

(13) transportation of wood chips;

(14) brokers for motor carriers of passengers, except as provided in section 13904(d); or

(15) transportation of broken, crushed, or powdered glass.

(b) EXEMPT UNLESS OTHERWISE NECESSARY.—Except to the extent the Secretary or Board, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Board has jurisdiction under this part over—

(1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except—

(A) when the transportation is under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the municipality, municipalities, or zone; or

(B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from jurisdiction under this part only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part; or

(3) the emergency towing of an accidentally wrecked or disabled motor vehicle.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 861.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10526 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13507, 13508, 13908 of this title.

§ 13507. Mixed loads of regulated and unregulated property

A motor carrier of property providing transportation exempt from jurisdiction under paragraph (6), (8), (11), (12), or (13) of section 13506(a) may transport property under such paragraph in the same vehicle and at the same time as property which the carrier is authorized to transport under a registration issued under section 13902(a). Such transportation shall not affect the unregulated status of such exempt property or the regulated status of the property which the carrier is authorized to transport under such registration.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 863.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10528 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13508. Limited authority over cooperative associations

(a) IN GENERAL.—Notwithstanding section 13506(a)(5), any cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or a federation of cooperative associations shall prepare and maintain such records relating to transportation provided by such association or federation, in such form as the Secretary or the Board may require by regulation to carry out the provisions of such section 13506(a)(5). The Secretary or the Board, or an employee designated by the Secretary or the Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of such association or federation; and

(2) inspect and copy any record of such association or federation.

(b) REPORTS.—Notwithstanding section 13506(a)(5), the Secretary or the Board may require a cooperative association or federation of cooperative associations described in subsection (a) of this section to file reports with the Secretary or the Board containing answers to questions about transportation provided by such association or federation.

(c) ENFORCEMENT.—The Secretary or the Board may bring a civil action to enforce subsections (a) and (b) of this section or a regulation or order of the Secretary or the Board issued under this section, when violated by a cooperative association or federation of cooperative associations described in subsection (a).

(d) REPORTING PENALTIES.—

(1) IN GENERAL.—A person required to make a report to the Secretary or the Board, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that—

(A) does not make the report;

(B) does not specifically, completely, and truthfully answer the question; or

(C) does not maintain the record in the form and manner prescribed under this section;

is liable to the United States for a civil penalty of not more than $500 for each violation and for not more than $250 for each additional day the violation continues.

(2) VENUE.—Trial in a civil action under paragraph (1) shall be in the judicial district in which—

(A) the cooperative association or federation of cooperative associations has its principal office;

(B) the violation occurred; or

(C) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

(e) EVASION PENALTIES.—A person, or an officer, employee, or agent of that person, that by any means knowingly and willfully tries to evade compliance with the provisions of this section shall be fined at least $200 but not more than $500 for the first violation and at least $250 but not more than $2,000 for a subsequent violation.

(f) RECORDKEEPING PENALTIES.—A person required to make a report, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that—

(1) willfully does not make that report;

(2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date that the question is required to be answered;

(3) willfully does not maintain that record in the form and manner prescribed;

(4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record;

(5) knowingly and willfully files a false report or record under this section;

(6) knowingly and willfully makes a false or incomplete entry in that record about a business-related fact or transaction; or

(7) knowingly and willfully maintains a record in violation of a regulation or order issued under this section;

shall be fined not more than $5,000.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 863.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10529 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SUBCHAPTER II—WATER CARRIER TRANSPORTATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13503, 14503, 14908, 14914 of this title; title 26 section 7701; title 46 App. section 883–1.

§ 13521. General jurisdiction

(a) GENERAL RULES.—The Secretary and the Board have jurisdiction over transportation insofar as water carriers are concerned—

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—

(A) by motor carrier that is in the United States; and

(B) by water carrier that is from a place in the United States to another place in the United States; and

(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—

(A) when the transportation is by motor carrier, the transportation is provided in the United States;

(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) DEFINITIONS.—In this section, the terms ''State'' and ''United States'' include the territories and possessions of the United States.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 865.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10541 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SUBCHAPTER III—FREIGHT FORWARDER SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13503, 13702, 13703, 13901, 13903, 14702, 14706, 14708, 14901, 14904, 14907, 14908, 14910, 14912 of this title.

§ 13531. General jurisdiction

(a) IN GENERAL.—The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—

(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) a place in a State and another place in the same State through a place outside the State; or

(3) a place in the United States and a place outside the United States.

(b) EXEMPTION OF CERTAIN AIR CARRIER SERVICE.—Neither the Secretary nor the Board has jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation of an air carrier subject to part A of subtitle VII of this title.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 865.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10561 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SUBCHAPTER IV—AUTHORITY TO EXEMPT

§ 13541. Authority to exempt transportation or services

(a) IN GENERAL.—In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—

(1) is not necessary to carry out the transportation policy of section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.

(b) INITIATION OF PROCEEDING.—The Secretary or Board, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary's or Board's own initiative or on application by an interested party.

(c) PERIOD OF EXEMPTION.—The Secretary or Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

(d) REVOCATION.—The Secretary or Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 13101.

(e) LIMITATIONS.—

(1) IN GENERAL.—The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or activities approved under section 13703 or 14302 or not terminated under section 13907(d)(2).

(2) WATER CARRIERS.—The Secretary or Board, as applicable, may not exempt a water carrier from the application of, or compliance with, section 13701 or 13702 for transportation in the non-contiguous domestic trade.

(f) CONTINUATION OF CERTAIN EXISTING EXEMPTIONS FOR WATER CARRIERS.—The Secretary or Board, as applicable, shall not regulate or exercise jurisdiction under this part over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under Federal law in effect on November 1, 1995.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 866.)

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, § 102(a).

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14303 of this title.

CHAPTER 137—RATES AND THROUGH ROUTES

Sec.
13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation.
13702. Tariff requirement for certain transportation.
13703. Certain collective activities; exemption from antitrust laws.
13704. Household goods rates—estimates; guarantees of service.
13705. Requirements for through routes among motor carriers of passengers.
13706. Liability for payment of rates.
13707. Payment of rates.
13708. Billing and collecting practices.
13709. Procedures for resolving claims involving unfiled, negotiated transportation rates.
13710. Additional billing and collecting practices.
13711. Alternative procedure for resolving undercharge disputes.
13712. Government traffic.
13713. Food and grocery transportation.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 10703, 10742 of this title.

§ 13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation

(a) REASONABLENESS.—

(1) CERTAIN HOUSEHOLD GOODS TRANSPORTATION; JOINT RATES INVOLVING WATER TRANSPORTATION.—A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

(A) a movement of household goods,

(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or

(C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703,

must be reasonable.

(2) THROUGH ROUTES AND DIVISIONS OF JOINT RATES.—Through routes and divisions of joint rates for such transportation or service must be reasonable.

(b) PRESCRIPTION BY BOARD FOR VIOLATIONS.—When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) FILING OF COMPLAINT.—A complaint that a rate, classification, rule, or practice in noncontiguous domestic trade violates subsection (a) may be filed with the Board.

(d) ZONE OF REASONABLENESS.—

(1) IN GENERAL.—For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

(2) ADJUSTMENTS TO THE ZONE.—The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

(3) DETERMINATIONS AFTER COMPLAINT.—The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

(4) REPARATIONS.—Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding or violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 867.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10701, 10704, and 10705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13541, 13702, 13710 of this title.

§ 13702. Tariff requirement for certain transportation

(a) IN GENERAL.—Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

(2) for movement of household goods;

only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

(b) TARIFF REQUIREMENTS FOR NONCONTIGUOUS DOMESTIC TRADE.—

(1) FILING.—A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) CONTENTS.—The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

(A) the carriers that are parties to it;

(B) the places between which property will be transported;

(C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(3) INLAND DIVISIONS.—A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of that through rate.

(4) TIME-VOLUME RATES.—Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

(5) CHANGES.—The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

(A) publish new tariffs that incorporate changes, or

(B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

(6) COMPLAINTS.—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(c) TARIFF REQUIREMENTS FOR HOUSEHOLD GOODS CARRIERS.—

(1) IN GENERAL.—A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

(2) NOTICE OF AVAILABILITY.—A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

(3) REQUIREMENTS.—A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this part. A tariff that does not comply with this subsection may not be enforced against any individual shipper.

(4) INCORPORATION BY REFERENCE.—A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

(5) COMPLAINTS.—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(d) INVALIDATION.—The Board may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Board carrying out this section.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 868.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10761 and 10762 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13541, 13701, 13711, 14704, 14706, 14709, 14901, 14902, 14903, 14904, 14913 of this title.

§ 13703. Certain collective activities; exemption from antitrust laws

(a) AGREEMENTS.—

(1) AUTHORITY TO ENTER.—A motor carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into an agreement with one or more such carriers to establish—

(A) through routes and joint rates;

(B) rates for the transportation of household goods;

(C) classifications;

(D) mileage guides;

(E) rules;

(F) divisions;

(G) rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates); or

(H) procedures for joint consideration, initiation, or establishment of matters described in subparagraphs (A) through (G).

(2) SUBMISSION OF AGREEMENT TO BOARD; APPROVAL.—An agreement entered into under subsection (a)[1] may be submitted by any carrier or carriers that are parties to such agreement to the Board for approval and may be approved by the Board only if it finds that such agreement is in the public interest.

(3) CONDITIONS.—The Board may require compliance with reasonable conditions consistent with this part to assure that the agreement furthers the transportation policy set forth in section 13101.

(4) INDEPENDENTLY ESTABLISHED RATES.—Any carrier which is a party to an agreement under paragraph (1) is not, and may not be, precluded from independently establishing its own rates, classification, and mileages or from adopting and using a noncollectively made classification or mileage guide.

(5) INVESTIGATIONS.—

(A) REASONABLENESS.—The Board may suspend and investigate the reasonableness of any rate, rule, classification, or rate adjustment of general application made pursuant to an agreement under this section.

(B) ACTIONS NOT IN THE PUBLIC INTEREST.—The Board may investigate any action taken pursuant to an agreement approved under this section. If the Board finds that the action is not in the public interest, the Board may take such measures as may be necessary to protect the public interest with regard to the action, including issuing an order directing the parties to cease and desist or modify the action.

(6) EFFECT OF APPROVAL.—If the Board approves the agreement or renews approval of the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to parties and other persons with respect to making or carrying out the agreement.

(b) RECORDS.—The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board, or its delegate, may inspect a record maintained under this section, or monitor any organization's compliance with this section.

(c) REVIEW.—The Board may review an agreement approved under this section, on its own initiative or on request, and shall change the conditions of approval or terminate it when necessary to protect the public interest. Action of the Board under this section—

(1) approving an agreement,

(2) denying, ending, or changing approval,

(3) prescribing the conditions on which approval is granted, or

(4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a).

(d) EXPIRATION OF APPROVALS; RENEWALS.—Subject to subsection (c), approval of an agreement under subsection (a) shall expire 3 years after the date of approval unless renewed under this subsection. The approval may be renewed upon request of the parties to the agreement if such parties resubmit the agreement to the Board, the agreement is unchanged, and the Board approves such renewal. The Board shall approve the renewal unless it finds that the re-

[1] So in original. Probably should be ''paragraph (1)''.

newal is not in the public interest. Parties to the agreement may continue to undertake activities pursuant to the previously approved agreement while the renewal request is pending.

(e) EXISTING AGREEMENTS.—Agreements approved under former section 10706(b) and in effect on December 31, 1995, shall be treated for purposes of this section as approved by the Board under this section beginning on January 1, 1996.

(f) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) UNDERCHARGE CLAIMS.—Nothing in this section shall serve as a basis for any undercharge claim.

(2) OBLIGATION OF SHIPPER.—Nothing in this title, the ICC Termination Act of 1995, or any amendments or repeals made by such Act shall be construed as creating any obligation for a shipper based solely on a classification that was on file with the Interstate Commerce Commission or elsewhere on December 31, 1995.

(g) INDUSTRY STANDARD GUIDES.—

(1) IN GENERAL.—

(A) PUBLIC AVAILABILITY.—Routes, rates, classifications, mileage guides, and rules established under agreements approved under this section shall be published and made available for public inspection upon request.

(B) PARTICIPATION OF CARRIERS.—

(i) IN GENERAL.—A motor carrier of property whose routes, rates, classifications, mileage guides, rules, or packaging are determined or governed by publications established under agreements approved under this section must participate in the determining or governing publication for such provisions to apply.

(ii) POWER OF ATTORNEY.—The motor carrier of property shall issue a power of attorney to the publishing agent and, upon its acceptance, the agent shall issue a written certification to the motor carrier affirming its participation in the governing publication, and the certification shall be made available for public inspection.

(2) MILEAGE LIMITATION.—No carrier subject to jurisdiction under subchapter I or III of chapter 135 may enforce collection of its mileage rates unless such carrier—

(A) is a participant in a publication of mileages formulated under an agreement approved under this section; or

(B) uses a publication of mileage (other than a publication described in subparagraph (A)) that can be examined by any interested person upon reasonable request.

(h) SINGLE LINE RATE DEFINED.—In this section, the term ''single line rate'' means a rate, charge, or allowance proposed by a single motor carrier that is applicable only over its line and for which the transportation can be provided by that carrier.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 869; amended Pub. L. 104–287, § 5(28), Oct. 11, 1996, 110 Stat. 3391.)

REFERENCES IN TEXT

Former section 10706(b), referred to in subsec. (e), probably means section 10706(b) of this title as in effect before that section was omitted and a new section 10706 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 812.

The ICC Termination Act of 1995, referred to in subsec. (f)(2), is Pub. L. 104–88, Dec. 29, 1995, 109 Stat. 803. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 101 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–287, § 5(28)(A), substituted ''December 31, 1995,'' for ''the day before the effective date of this section'' and ''January 1, 1996'' for ''such effective date''.

Subsec. (f)(2). Pub. L. 104–287, § 5(28)(B), substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13541, 13701, 14706 of this title.

§ 13704. Household goods rates—estimates; guarantees of service

(a) IN GENERAL.—

(1) AUTHORITY.—Subject to the provisions of paragraph (2) of this subsection, a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 may establish a rate for the transportation of household goods which is based on the carrier's written, binding estimate of charges for providing such transportation.

(2) NONPREFERENTIAL; NONPREDATORY.—Any rate established under this subsection must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory.

(b) RATES FOR GUARANTEED SERVICE.—

(1) AUTHORITY.—Subject to the provisions of paragraph (2) of this subsection, a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 may establish rates for the transportation of household goods which guarantee that the carrier will pick up and deliver such household goods at the times specified in the contract for such services and provide a penalty or per diem payment in the event the carrier fails to pick up or deliver such household goods at the specified time. The charges, if any, for such guarantee and penalty provision may vary to reflect one or more options available to meet a particular shipper's needs.

(2) AUTHORITY OF SECRETARY TO REQUIRE NONGUARANTEED SERVICE RATES.—Before a carrier may establish a rate for any service under paragraph (1) of this subsection, the Secretary may require such carrier to have in effect and keep in effect, during any period such rate is in effect under paragraph (1), a rate for such

service which does not guarantee the pick up and delivery of household goods at the times specified in the contract for such services and which does not provide a penalty or per diem payment in the event the carrier fails to pick up or deliver household goods at the specified time.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 872.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10735 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13705. Requirements for through routes among motor carriers of passengers

(a) ESTABLISHMENT; REASONABLENESS.—A motor carrier providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall establish through routes with other carriers of the same type and shall establish individual and joint rates applicable to them. Such through route must be reasonable.

(b) PRESCRIBED BY BOARD.—When the Board finds it necessary to enforce the requirements of this section, the Board may prescribe through routes and the conditions under which those routes must be operated for motor carriers providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 872.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10703 and 10705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13706. Liability for payment of rates

(a) LIABILITY OF CONSIGNEE.—Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this section when the transportation is provided by motor carrier under this part. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

(1) of the agency and absence of beneficial title; and

(2) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(b) LIABILITY OF BENEFICIAL OWNER.—When the consignee is liable only for rates billed at the time of delivery under subsection (a), the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner is liable for those additional rates regardless of the bill of the lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 872.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10744 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13707. Payment of rates

(a) TRANSFER OF POSSESSION UPON PAYMENT.—Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

(b) EXCEPTIONS.—

(1) REGULATIONS.—Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.

(2) EXTENSIONS OF CREDIT TO GOVERNMENTAL ENTITIES.—Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 873.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10743 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13708. Billing and collecting practices

(a) DISCLOSURE.—A motor carrier subject to jurisdiction under subchapter I of chapter 135 shall disclose, when a document is presented or electronically transmitted for payment to the person responsible directly to the motor carrier for payment or agent of such responsible person, the actual rates, charges, or allowances for any transportation service and shall also disclose, at such time, whether and to whom any allowance or reduction in charges is made.

(b) FALSE OR MISLEADING INFORMATION.—No person may cause a motor carrier to present false or misleading information on a document about the actual rate, charge, or allowance to any party to the transaction.

(c) ALLOWANCES FOR SERVICES.—When the actual rate, charge, or allowance is dependent upon the performance of a service by a party to the transportation arrangement, such as tendering a volume of freight over a stated period of time, the motor carrier shall indicate in any document presented for payment to the person responsible directly to the motor carrier that a reduction, allowance, or other adjustment may apply.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 873.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10767 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13709. Procedures for resolving claims involving unfiled, negotiated transportation rates

(a) TRANSPORTATION PROVIDED AT RATES OTHER THAN LEGAL TARIFF RATES.—

(1) IN GENERAL.—When a claim is made by a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter II of chapter 105 (as in effect on December 31, 1995) or subchapter I of chapter 135, by a freight forwarder (other than a household goods freight forwarder), or by a party representing such a carrier or freight forwarder regarding the collection of rates or charges for such transportation in addition to those originally billed and collected by the carrier or freight forwarder for such transportation, the person against whom the claim is made may elect to satisfy the claim under the provisions of subsection (b), (c), or (d), upon showing that—

(A) the carrier or freight forwarder is no longer transporting property or is transporting property for the purpose of avoiding the application of this section; and

(B) with respect to the claim—

(i) the person was offered a transportation rate by the carrier or freight forwarder other than that legally on file at the time with the Board or with the Interstate Commerce Commission, as required, for the transportation service;

(ii) the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

(iii) the carrier or freight forwarder did not properly or timely file with the Board or with the Interstate Commerce Commission, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

(iv) such transportation rate was billed and collected by the carrier or freight forwarder; and

(v) the carrier or freight forwarder demands additional payment of a higher rate filed in a tariff.

(2) FORUM.—If there is a dispute as to the showing under paragraph (1)(A), such dispute shall be resolved by the court in which the claim is brought. If there is a dispute as to the showing under paragraph (1)(B), such dispute shall be resolved by the Board. Pending the resolution of any such dispute, the person shall not have to pay any additional compensation to the carrier or freight forwarder.

(3) EFFECT OF SATISFACTION OF CLAIMS.—Satisfaction of the claim under subsection (b), (c), or (d) shall be binding on the parties, and the parties shall not be subject to chapter 119 of this title, as such chapter was in effect on December 31, 1995, or chapter 149.

(b) CLAIMS INVOLVING SHIPMENTS WEIGHING 10,000 POUNDS OR LESS.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed 10,000 pounds or less, by payment of 20 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

(c) CLAIMS INVOLVING SHIPMENTS WEIGHING MORE THAN 10,000 POUNDS.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed more than 10,000 pounds, by payment of 15 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

(d) CLAIMS INVOLVING PUBLIC WAREHOUSEMEN.—Notwithstanding subsections (b) and (c), a person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim by payment of 5 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid if such person is a public warehouseman. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

(e) EFFECTS OF ELECTION.—When a person from whom additional legally applicable freight rates or charges are sought does not elect to use the provisions of subsection (b), (c) or (d), the person may pursue all rights and remedies existing under this part or, for transportation provided before January 1, 1996, all rights and remedies that existed under this title on December 31, 1995.

(f) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the legally applicable freight rate or charges being claimed by a carrier or freight forwarder in addition to those already billed and collected, the person shall not have to pay any additional compensation to the carrier or freight forwarder until the Board has made a determination as to the reasonableness of the challenged rate as applied to the freight of the person against whom the claim is made.

(g) NOTIFICATION OF ELECTION.—

(1) GENERAL RULE.—A person must notify the carrier or freight forwarder as to its election to proceed under subsection (b), (c), or (d). Except as provided in paragraphs (2), (3), and (4), such election may be made at any time.

(2) DEMANDS FOR PAYMENT INITIALLY MADE AFTER DECEMBER 3, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder initially demands the payment of additional freight charges after December 3, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f) at the time of the making of such initial demand, the election must be made not later than the later of—

(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

(B) March 5, 1994.

(3) PENDING SUITS FOR COLLECTION MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has filed, before December 4, 1993, a suit for the collection of additional freight charges and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the 90th day following the date on which such notification is received.

(4) DEMANDS FOR PAYMENT MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has demanded the payment of additional freight charges, and has not filed a suit for the collection of such additional freight charges, before December 4, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the later of—

(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

(B) March 5, 1994.

(h) CLAIMS INVOLVING SMALL-BUSINESS CONCERNS, CHARITABLE ORGANIZATIONS, AND RECYCLABLE MATERIALS.—

(1) IN GENERAL.—Notwithstanding subsections (b), (c), and (d), a person from whom the additional legally applicable and effective tariff rate or charges are sought shall not be liable for the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid—

(A) if such person qualifies as a small-business concern under the Small Business Act (15 U.S.C. 631 et seq.),

(B) if such person is an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

(C) if the cargo involved in the claim is recyclable materials.

(2) RECYCLABLE MATERIALS DEFINED.—In this subsection, the term ''recyclable materials'' means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 874; amended Pub. L. 104–287, § 5(29), Oct. 11, 1996, 110 Stat. 3391.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287, § 5(29)(A)

This amends 49:13709(a)(1) and (3) for clarity and consistency.

PUB. L. 104–287, § 5(29)(B)

This amends 49:13709(e) by setting out the effective date for 49:13709 and for clarity and consistency.

REFERENCES IN TEXT

Subchapter II of chapter 105, referred to in subsec. (a)(1), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

Chapter 119, referred to in subsec. (a)(3), was omitted and a new chapter 119 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 849, effective Jan. 1, 1996.

The Small Business Act, referred to in subsec. (h)(1)(A), is Pub. L. 85–536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (h)(1)(B), is classified to section 501 of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (a)(1), (3). Pub. L. 104–287, § 5(29)(A), substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

Subsec. (e). Pub. L. 104–287, § 5(29)(B), substituted ''January 1, 1996'' for ''the effective date of this section'' and ''December 31, 1995'' for ''the day before such effective date''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13711 of this title.

§ 13710. Additional billing and collecting practices

(a) MISCELLANEOUS PROVISIONS.—

(1) INFORMATION RELATING TO BASIS OF RATE.—A motor carrier of property (other than a motor carrier providing transportation in noncontiguous domestic trade) shall provide to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices, upon which any rate applicable to its shipment or agreed to between the shipper and carrier is based.

(2) REASONABLENESS OF RATES; COLLECTING ADDITIONAL CHARGES.—When the applicability or reasonableness of the rates and related provisions billed by a motor carrier is challenged by the person paying the freight charges, the Board shall determine whether such rates and provisions are reasonable under section 13701 or applicable based on the record before it.

(3) BILLING DISPUTES.—

(A) INITIATED BY MOTOR CARRIERS.—In those cases where a motor carrier (other

than a motor carrier providing transportation of household goods or in noncontiguous domestic trade) seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the Board determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the receipt of the original bill in order to have the right to collect such charges.

(B) INITIATED BY SHIPPERS.—If a shipper seeks to contest the charges originally billed or additional charges subsequently billed, the shipper may request that the Board determine whether the charges billed must be paid. A shipper must contest the original bill or subsequent bill within 180 days of receipt of the bill in order to have the right to contest such charges.

(4) VOIDING OF CERTAIN TARIFFS.—Any tariff on file with the Interstate Commerce Commission on August 26, 1994, and not required to be filed after that date is null and void beginning on that date. Any tariff on file with the Interstate Commerce Commission on January 1, 1996, and not required to be filed after that date is null and void beginning on that date.

(b) RESOLUTION OF DISPUTES OVER STATUS OF COMMON CARRIER OR CONTRACT CARRIER.—If a motor carrier (other than a motor carrier providing transportation of household goods) that was subject to jurisdiction under subchapter II of chapter 105, as in effect on December 31, 1995, and that had authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation that was provided prior to January 1, 1996, was provided in its common carrier or contract carrier capacity and the parties are not able to resolve the dispute consensually, the Board shall resolve the dispute.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 876; amended Pub. L. 104–287, § 5(30), Oct. 11, 1996, 110 Stat. 3391.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287, § 5(30)(A)

This sets out the effective date of 49:13710.

PUB. L. 104–287, § 5(30)(B)

This amends 49:13710(b) by setting out the effective date for 49:13710 and for clarity and consistency.

REFERENCES IN TEXT

Subchapter II of chapter 105, referred to in subsec. (b), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10762 and 11101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–287, § 5(30)(A), substituted ''January 1, 1996,'' for ''the effective date of this section''.

Subsec. (b). Pub. L. 104–287, § 5(30)(B), substituted ''December 31, 1995'' for ''the day before the effective date of this section'' and ''January 1, 1996,'' for ''the effective date of this section''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14706 of this title.

§ 13711. Alternative procedure for resolving undercharge disputes

(a) GENERAL RULE.—It shall be an unreasonable practice for a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter I of chapter 135 or, before January 1, 1996, to have provided transportation that was subject to jurisdiction under subchapter II of chapter 105, as in effect on December 31, 1995, a freight forwarder (other than a household goods freight forwarder), or a party representing such a carrier or freight forwarder to attempt to charge or to charge for a transportation service the difference between (1) the applicable rate that was lawfully in effect pursuant to a tariff that was filed in accordance with this chapter or, with respect to transportation provided before January 1, 1996, in accordance with chapter 107, as in effect on the date the transportation was provided, by the carrier or freight forwarder applicable to such transportation service, and (2) the negotiated rate for such transportation service if the carrier or freight forwarder is no longer transporting property between places described in section 13501(1) or is transporting property between places described in section 13501(1) for the purpose of avoiding application of this section.

(b) JURISDICTION OF BOARD.—

(1) DETERMINATION.—The Board shall have jurisdiction to make a determination of whether or not attempting to charge or the charging of a rate by a motor carrier or freight forwarder or party representing a motor carrier or freight forwarder is an unreasonable practice under subsection (a). If the Board determines that attempting to charge or the charging of the rate is an unreasonable practice under subsection (a), the carrier, freight forwarder, or party may not collect the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service.

(2) FACTORS TO CONSIDER.—In making a determination under paragraph (1), the Board shall consider—

(A) whether the person was offered a transportation rate by the carrier or freight forwarder or party other than that legally on file with the Interstate Commerce Commission or the Board, as required, at the time of the movement for the transportation service;

(B) whether the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

(C) whether the carrier or freight forwarder did not properly or timely file with the Interstate Commerce Commission or the Board, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

(D) whether the transportation rate was billed and collected by the carrier or freight forwarder; and

(E) whether the carrier or freight forwarder or party demands additional payment of a higher rate filed in a tariff.

(c) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the practice of a motor carrier, freight forwarder, or party described in subsection (a) to attempt to charge or to charge the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service in addition to those charges already billed and collected for the transportation service, the person shall not have to pay any additional compensation to the carrier, freight forwarder, or party until the Board has made a determination as to the reasonableness of the practice as applied to the freight of the person against whom the claim is made.

(d) TREATMENT.—Subsection (a) is an exception to the requirements of section 13702 and, for transportation provided before January 1, 1996, to the requirements of sections 10761(a) and 10762, as in effect on December 31, 1995, as such sections relate to a filed tariff rate and other general tariff requirements.

(e) NONAPPLICABILITY OF NEGOTIATED RATE DISPUTE RESOLUTION PROCEDURE.—If a person elects to seek enforcement of subsection (a) with respect to a rate for a transportation or service, section 13709 shall not apply to such rate.

(f) DEFINITIONS.—In this section, the term ''negotiated rate'' means a rate, charge, classification, or rule agreed upon by a motor carrier or freight forwarder and a shipper through negotiations pursuant to which no tariff was lawfully and timely filed and for which there is written evidence of such agreement.

(g) APPLICABILITY TO PENDING CASES.—This section shall apply to all cases and proceedings pending on January 1, 1996.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 877; amended Pub. L. 104–287, § 5(31), Oct. 11, 1996, 110 Stat. 3391.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287

This amends 49:13711(a), (d), and (g) by setting out the effective date of 49:13711 and for clarity and consistency.

REFERENCES IN TEXT

Subchapter II of chapter 105, referred to in subsec. (a), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

Chapter 107, as in effect on the date transportation was provided, referred to in subsec. (a), means chapter 107 of this title, as in effect on the date transportation was provided with respect to transportation provided before Jan. 1, 1996. Chapter 107 (§ 10701 et seq.) was omitted and a new chapter 107 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 809, effective Jan. 1, 1996.

Sections 10761(a) and 10762, referred to in subsec. (d), were omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2(e) of Pub. L. 103–180, set out as a note under former section 10701 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–287, § 5(31)(A), substituted ''or, before January 1, 1996'' for ''or, before the effective date of this section'', ''December 31, 1995'' for ''the day before the effective date of this section'', and ''provided before January 1, 1996'' for ''provided before the effective date of this section''.

Subsec. (d). Pub. L. 104–287, § 5(31)(B), substituted ''January 1, 1996'' for ''the effective date of this section'' and ''December 31, 1995'' for ''the day before such effective date''.

Subsec. (g). Pub. L. 104–287, § 5(31)(C), substituted ''January 1, 1996'' for ''the effective date of this section''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

§ 13712. Government traffic

A 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 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 879.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10721 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 3726.

§ 13713. Food and grocery transportation

(a) CERTAIN COMPENSATION PROHIBITED.—Notwithstanding any other provision of law, it shall not be unlawful for a seller of food and grocery products using a uniform zone delivered pricing system to compensate a customer who picks up purchased food and grocery products at the shipping point of the seller if such compensation is available to all customers of the seller on a nondiscriminatory basis and does not exceed the actual cost to the seller of delivery to such customer.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that any savings accruing to a customer by reason of compensation permitted by subsection (a) of this section should be passed on to the ultimate consumer.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 879.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10732 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 139—REGISTRATION

Sec.
13901. Requirement for registration.
13902. Registration of motor carriers.
13903. Registration of freight forwarders.
13904. Registration of brokers.
13905. Effective periods of registration.
13906. Security of motor carriers, brokers, and freight forwarders.
13907. Household goods agents.
13908. Registration and other reforms.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 14504, 14701 of this title; title 15 section 5904.

§ 13901. Requirement for registration

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 879.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10921 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14707, 14901 of this title.

§ 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) this part and the applicable regulations of the Secretary and the Board;

(B) any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and

(C) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

(2) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider and, to the extent applicable, make findings on, any evidence demonstrating that the registrant is unable to comply with the requirements of subparagraph (A), (B), or (C) of paragraph (1).

(3) WITHHOLDING.—If the Secretary determines that any registrant under this section does not meet the requirements of paragraph (1), the Secretary shall withhold registration.

(4) LIMITATION ON COMPLAINTS.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board, the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection.

(b) MOTOR CARRIERS OF PASSENGERS.—

(1) REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(2) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—

(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

(i) the recipient meets the requirements of subsection (a)(1); and

(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

(3) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of pas-

sengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(4) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

(5) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

(6) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

(7) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

(8) DEFINITIONS.—In this subsection, the following definitions apply:

(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term ''public recipient of governmental assistance'' means—

(i) any State,

(ii) any municipality or other political subdivision of a State,

(iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,

(iv) any Indian tribe, and

(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv),

which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term ''private recipient of government assistance'' means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the United States-Mexico border as such zones were defined on December 31, 1995; or

(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rulemaking required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms ''motor common carrier'' and ''motor contract carrier'' have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(e) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term ''motor carrier'' includes foreign motor private carriers.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 880; amended Pub. L. 104–287, § 5(32), Oct. 11, 1996, 110 Stat. 3391.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287, § 5(32)(A)

This amends 49:13902(b)(8)(A) to correct a grammatical error and to set out the effective date of 49:13902(b).

PUB. L. 104–287, § 5(32)(B)

This sets out the effective date of 49:13902(b)(8).

PUB. L. 104–287, § 5(32)(C)

This amends 49:13902(c)(4)(A) and (d)(1) and (2) for clarity and consistency.

REFERENCES IN TEXT

Section 6 of the Bus Regulatory Reform Act of 1982, referred to in subsec. (c)(4)(B), is section 6 of Pub. L. 97–261, Sept. 20, 1982, 96 Stat. 1103, which amended former sections 10102, 10322, 10521, 10922, and 11711 of this title, section 250 of Title 26, Internal Revenue Code, and section 5201 of Title 39, Postal Service.

Section 4481 of the Internal Revenue Code of 1986, referred to in subsec. (c)(8), is classified to section 4481 of Title 26, Internal Revenue Code.

Section 10102, referred to in subsec. (d)(2), was omitted and a new section 10102 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 806, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10922 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (b)(8)(A). Pub. L. 104–287, § 5(32)(A), inserted ''and'' after ''any Indian tribe,'' in cl. (iv), struck out ''and'' after ''clause (i), (ii), (iii), or (iv),'' in cl. (v), and substituted ''January 1, 1996,'' for ''the effective date of this subsection'' in concluding provisions.

Subsec. (b)(8)(B). Pub. L. 104–287, § 5(32)(B), substituted ''January 1, 1996,'' for ''the effective date of this paragraph''.

Subsecs. (c)(4)(A), (d)(1)(A), (2). Pub. L. 104–287, § 5(32)(C), substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

LIMITED MODIFICATION TO MORATORIUM ON ISSUANCE OF CERTIFICATES OR PERMITS WITH RESPECT TO MEXICO

Memorandum of President of the United States, May 6, 1993, 58 F.R. 27647, provided:

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 [Pub. L. 97–261, see former 49 U.S.C. 10922(m)(1), (2)] imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. The Act [Pub. L. 97–261, see Tables for classification] authorized the President to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a contiguous foreign country or political subdivision thereof that substantially prohibits the granting of motor carrier authority to persons from the United States.

I am pleased that an agreement between the United States and Mexico has been concluded to ensure fair and reciprocal treatment for charter and tour bus interests on both sides of the border. The agreement reached, however, does not allow for full access to cross-border and domestic markets. Therefore, the moratorium must reflect the conditions under which operating authority may be issued to Mexican charter and tour companies under the agreement.

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. section 10922(*l*)(2)(A) [see former 49 U.S.C. 10922(m)(2)(A)], I hereby make a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or special operations, in foreign commerce, in round trip or one-way service between Mexico and the United States pursuant to the following restrictions:

1. The Mexican motor carrier can conduct cross-border charter or special service in the United States only when the international tour or charter begins in Mexico;

2. Tickets or tour packages for such operations cannot be sold in the United States; and

3. The terms of the grants of authority given to Mexican motor carriers will be limited by the life of the agreement with Mexico covering reciprocal cross-border charter and special operations.

This action applies only to international charter and tour operations, does not allow for point-to-point serv-

ice within the United States, and does not authorize companies to conduct cross-border regular route service. This action preserves the status quo with respect to Mexican trucking companies and Mexican companies engaged in regular route service, and will maintain the moratorium on those operations through September 25, 1994, unless earlier revoked or modified.

Accordingly, you are directed to notify the Congress today on my behalf that, effective 60 days hence, the moratorium will no longer be in effect for Mexican charter and tour bus companies subject to the above stated conditions. Because of this action, the Interstate Commerce Commission will then accept and process expeditiously all applications for operating authority from Mexican owned, controlled, or domiciled charter and tour bus firms. I should note that applications in Mexico by United States charter and tour bus firms will be similarly treated.

You are hereby authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Jan. 1, 1994, 59 F.R. 653, provided:

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 [Pub. L. 97–261, see former 49 U.S.C. 10922(m)(1), (2)] imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by, persons of a contiguous foreign country. The Act [Pub. L. 97–261, see Tables for classification] authorized the President to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof that substantially prohibits the granting of motor carrier authority to persons from the United States.

As set forth in the Statement of Administrative Action regarding the North American Free Trade Agreement (NAFTA) that I submitted to the Congress on November 3, 1993, the moratorium with respect to Mexico will be lifted in phases to coincide with the schedule of liberalization in the relevant provisions of the NAFTA. The NAFTA specifically states that the moratorium will not apply to the provision of cross-border charter or tour bus services as of the date of entry into force of the Agreement.

This is to give public notice that, pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. section 10922(*l*)(2)(A) [see former 49 U.S.C. 10922(m)(2)(A)], on November 3, 1993, I gave the Congress notice of my intention to make a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by, persons of Mexico. This modification will take effect on January 1, 1994, the 60th day after my notice to the Congress.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or tour bus operations, in foreign commerce, in round-trip or one-way service between Mexico and the United States.

This action applies only to international charter or tour bus operations, does not allow for point-to-point bus service within the United States, and does not authorize companies to conduct cross-border regular route bus service.

Effective January 1, 1994, the Interstate Commerce Commission will begin to accept and process expeditiously all applications for operating authority from Mexican owned, controlled, or domiciled charter and tour bus firms.

This determination shall be published in the Federal Register.

WILLIAM J. CLINTON.

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.]

EXTENSION OF MORATORIUM

Memorandum of President of the United States, Mar. 2, 1995, 60 F.R. 12393, provided:

Memorandum for the Secretary of Transportation [and] the United States Trade Representative

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10922(*l*)(1) and (2) [Pub. L. 97–261, see former 49 U.S.C. 10922(m)(1), (2)], I hereby extend for an additional 2 years both the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1996, unless earlier revoked or modified.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Sept. 25, 1992, 57 F.R. 44647, extended maratorium through Sept. 19, 1994.

Memorandum of President of the United States, Sept. 17, 1990, 55 F.R. 38657, extended moratorium through Sept. 19, 1992.

Memorandum of President of the United States, Sept. 15, 1988, 53 F.R. 36430, extended moratorium through Sept. 19, 1990.

Memorandum of President of the United States, Sept. 23, 1986, 51 F.R. 34079, extended moratorium through Sept. 19, 1988.

Memorandum of President of the United States, Aug. 30, 1984, 49 F.R. 35001, extended moratorium through Sept. 19, 1986.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13507, 13905, 13906, 14301, 14701, 14702, 14707, 14708, 14901, 14910, 31144 of this title.

§ 13903. Registration of freight forwarders

(a) IN GENERAL.—The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board.

(b) REGISTRATION AS CARRIER REQUIRED.—The freight forwarder may provide transportation as the carrier itself only if the freight forwarder also has registered to provide transportation as a carrier under this chapter.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 884.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10923 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13905, 13906, 14707, 14708 of this title.

§ 13904. Registration of brokers

(a) IN GENERAL.—The Secretary shall register, subject to section 13906(b), a person to be a broker for transportation of property subject to jurisdiction under subchapter I of chapter 135, if the Secretary finds that the person is fit, willing, and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary.

(b) REGISTRATION AS CARRIER REQUIRED.—

(1) IN GENERAL.—The broker may provide the transportation itself only if the broker also has been registered to provide the transportation as a motor carrier under this chapter.

(2) LIMITATION.—This subsection does not apply to a motor carrier registered under this chapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other registered motor carriers, or with rail or water carriers.

(c) REGULATIONS TO PROTECT SHIPPERS.—Regulations of the Secretary applicable to brokers registered under this section shall provide for the protection of shippers by motor vehicle.

(d) BOND AND INSURANCE.—The Secretary may impose on brokers for motor carriers of passengers such requirements for bonds or insurance or both as the Secretary determines are needed to protect passengers and carriers dealing with such brokers.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 884.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10924 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13506, 13905, 13906, 14707 of this title.

§ 13905. Effective periods of registration

(a) PERSON HOLDING ICC AUTHORITY.—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on December 31, 1995, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

(b) IN GENERAL.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

(c) SUSPENSION, AMENDMENTS, AND REVOCATIONS.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board, or a condition of its registration.

(d) PROCEDURE.—Except on application of the registrant, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—

(1) the Secretary has issued an order to the registrant under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

(2) the registrant willfully does not comply with the order for a period of 30 days.

(e) EXPEDITED PROCEDURE.—

(1) PROTECTION OF SAFETY.—Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with safety requirements of the Secretary or the safety fitness requirements pursuant to section 13904(c), 13906, or 31144,[1] of this title, or an order or regulation of the Secretary prescribed under those sections.

(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend a registration of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend under this subsection the registration only after giving notice of the suspension to the registrant. The suspension remains in effect until the registrant complies with those applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes such suspension.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 884; amended Pub. L. 104–287, § 5(33), Oct. 11, 1996, 110 Stat. 3392.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287

This amends 49:13905(a) for clarity and consistency.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10925 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–287 substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13902 of this title.

§ 13906. Security of motor carriers, brokers, and freight forwarders

(a) MOTOR CARRIER REQUIREMENTS.—

(1) LIABILITY INSURANCE REQUIREMENT.—The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the ex-

[1] So in original. The comma probably should not appear.

tent applicable. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A registration remains in effect only as long as the registrant continues to satisfy the security requirements of this paragraph.

(2) AGENCY REQUIREMENT.—A motor carrier shall comply with the requirements of sections 13303 and 13304. To protect the public, the Secretary may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection. This paragraph only applies to a foreign motor private carrier and foreign motor carrier operating in the United States to the extent that such carrier is providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country.

(3) TRANSPORTATION INSURANCE.—The Secretary may require a registered motor carrier to file with the Secretary a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

(b) BROKER REQUIREMENTS.—The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation for which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

(c) FREIGHT FORWARDER REQUIREMENTS.—

(1) LIABILITY INSURANCE.—The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this part.

(2) FREIGHT FORWARDER INSURANCE.—The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

(3) EFFECTIVE PERIOD.—The freight forwarder's registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

(d) TYPE OF INSURANCE.—The Secretary may determine the type and amount of security filed under this section. A motor carrier may submit proof of qualifications as a self-insurer to satisfy the security requirements of this section. The Secretary shall adopt regulations governing the standards for approval as a self-insurer. Motor carriers which have been granted authority to self-insure as of January 1, 1996, shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary finds that the authority must be revoked.

(e) NOTICE OF CANCELLATION OF INSURANCE.—The Secretary shall issue regulations requiring the submission to the Secretary of notices of insurance cancellation sufficiently in advance of actual cancellation so as to enable the Secretary to promptly revoke the registration of any carrier or broker after the effective date of the cancellation.

(f) FORM OF ENDORSEMENT.—The Secretary shall also prescribe the appropriate form of endorsement to be appended to policies of insurance and surety bonds which will subject the insurance policy or surety bond to the full security limits of the coverage required under this section.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 885; amended Pub. L. 104–287, § 5(34), Oct. 11, 1996, 110 Stat. 3392.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10927 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–287 substituted ''January 1, 1996,'' for ''the effective date of this section''.

SELF-INSURANCE RULES

Section 104(h) of Pub. L. 104–88 provided that: ''The Secretary of Transportation shall continue to enforce the rules and regulations of the Interstate Commerce Commission, as in effect on July 1, 1995, governing the qualifications for approval of a motor carrier as a self-insurer, until such time as the Secretary finds it in the public interest to revise such rules. The revised rules must provide for—

''(1) continued ability of motor carriers to qualify as self-insurers; and

''(2) the continued qualification of all carriers then so qualified under the terms and conditions set by the Interstate Commerce Commission or Secretary at the time of qualification.''

[Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13902, 13904, 13905, 13908, 14707 of this title.

§ 13907. Household goods agents

(a) CARRIERS RESPONSIBLE FOR AGENTS.—Each motor carrier providing transportation of household goods shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier.

(b) STANDARD FOR SELECTING AGENTS.—Each motor carrier providing transportation of household goods shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services) and to fulfill the obligations imposed upon them by this part and by such carrier.

(c) ENFORCEMENT.—

(1) COMPLAINT.—Whenever the Secretary has reason to believe from a complaint or investigation that an agent providing household goods transportation services (including accessorial and terminal services) under the authority of a motor carrier providing transportation of household goods has violated section 14901(e) or 14912 or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue to such agent a complaint stating the charges and containing notice of the time and place of a hearing which shall be held no later than 60 days after service of the complaint to such agent.

(2) RIGHT TO DEFEND.—The agent shall have the right to appear at such hearing and rebut the charges contained in the complaint.

(3) ORDER.—If the agent does not appear at the hearing or if the Secretary finds that the agent has violated section 14901(e) or 14912 or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue an order to compel compliance with the requirement that the agent be fit, willing, and able. Thereafter, the Secretary may issue an order to limit, condition, or prohibit such agent from any involvement in the transportation or provision of services incidental to the transportation of household goods if, after notice and an opportunity for a hearing, the Secretary finds that such agent, within a reasonable time after the date of issuance of a compliance order under this section, but in no event less than 30 days after such date of issuance, has willfully failed to comply with such order.

(4) HEARING.—Upon filing of a petition with the Secretary by an agent who is the subject of an order issued pursuant to the second sentence of paragraph (3) of this subsection and after notice, a hearing shall be held with an opportunity to be heard. At such hearing, a determination shall be made whether the order issued pursuant to paragraph (3) of this subsection should be rescinded.

(5) COURT REVIEW.—Any agent adversely affected or aggrieved by an order of the Secretary issued under this subsection may seek relief in the appropriate United States court of appeals as provided by and in the manner prescribed in chapter 158 of title 28, United States Code.

(d) LIMITATION ON APPLICABILITY OF ANTITRUST LAWS.—

(1) IN GENERAL.—The antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to discussions or agreements between a motor carrier providing transportation of household goods and its agents (whether or not an agent is also a carrier) related solely to—

(A) rates for the transportation of household goods under the authority of the principal carrier;

(B) accessorial, terminal, storage, or other charges for services incidental to the transportation of household goods transported under the authority of the principal carrier;

(C) allowances relating to transportation of household goods under the authority of the principal carrier; and

(D) ownership of a motor carrier providing transportation of household goods by an agent or membership on the board of directors of any such motor carrier by an agent.

(2) BOARD REVIEW.—The Board, upon its own initiative or request, shall review any activities undertaken under paragraph (1) and shall modify or terminate the activity if necessary to protect the public interest.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) HOUSEHOLD GOODS.—The term ''household goods'' has the meaning such term had under section 10102(11) of this title, as in effect on December 31, 1995.

(2) TRANSPORTATION.—The term ''transportation'' means transportation that would be subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, as in effect on December 31, 1995, if such subchapter were still in effect.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 887; amended Pub. L. 104–287, § 5(35), Oct. 11, 1996, 110 Stat. 3392.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287

This amends 49:13907(e)(1) and (2) for clarity and consistency.

REFERENCES IN TEXT

Section 10102(11) of this title, referred to in subsec. (e)(1), was omitted and a new section 10102 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 806, effective Jan. 1, 1996.

Subchapter II of chapter 105 of this title, referred to in subsec. (e)(2), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10934 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (e)(1). Pub. L. 104–287, § 5(35)(A), substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

Subsec. (e)(2). Pub. L. 104–287, § 5(35)(B), substituted ''December 31, 1995'' for ''the day before such effective date''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13541, 14501 of this title.

§ 13908. Registration and other reforms

(a) REGULATIONS REPLACING CERTAIN PROGRAMS.—The Secretary, in cooperation with the States, and after notice and opportunity for public comment, shall issue regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system. The new system shall serve as a clearinghouse and depository of information on and identification of all foreign and domestic motor carriers, brokers, and freight forwarders, and others required to register with the Department as well as information on safety fitness and compliance with required levels of financial responsibility. In issuing the regulations, the Secretary shall consider whether or not to integrate the requirements of section 13304 into the new system and may integrate such requirements into the new system.

(b) FACTORS TO BE CONSIDERED.—In conducting the rulemaking under subsection (a), the Secretary shall, at a minimum, consider the following factors:

(1) Funding for State enforcement of motor carrier safety regulations.

(2) Whether the existing single State registration system is duplicative and burdensome.

(3) The justification and need for collecting the statutory fee for such system under section 14504(c)(2)(B)(iv).

(4) The public safety.

(5) The efficient delivery of transportation services.

(6) How, and under what conditions, to extend the registration system to motor private carriers and to carriers exempt under sections 13502, 13503, and 13506.

(c) FEE SYSTEM.—The Secretary may establish, under section 9701 of title 31, a fee system for registration and filing evidence of financial responsibility under the new system under subsection (a). Fees collected under the fee system shall cover the costs of operating and upgrading the registration system, including all personnel costs associated with the system. Fees collected under this subsection may be credited to the Department of Transportation appropriations account for purposes for which such fees are collected, and shall be available for expenditure until expended.

(d) STATE REGISTRATION PROGRAMS.—If the Secretary determines that no State should require insurance filings or collect fees for such filings (including filings and fees authorized under section 14504), the Secretary may prevent any State or political subdivision thereof, or any political authority of 2 or more States, from imposing any insurance filing requirements or fees that are for the same purposes as filings or fees the Secretary requires under the new system under subsection (a). The Secretary may not take any action pursuant to this subsection unless—

(1) fees that will be collected by the Secretary under subsection (c) and distributed in each fiscal year to the States will provide each State with at least as much revenue as that State received in fiscal year 1995 under section 11506, as in effect on December 31, 1995; and

(2) all States will receive from the distribution of such fees a minimum apportionment.

(e) DEADLINE FOR CONCLUSION; MODIFICATIONS.—Not later than 24 months after January 1, 1996, the Secretary—

(1) shall conclude the rulemaking under this section;

(2) may implement such changes under this section as the Secretary considers appropriate and in the public interest; and

(3) shall transmit to Congress a report on any findings of the rulemaking and the changes being implemented under this section, together with such recommendations for legislative language necessary to conform this part to such changes.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 888; amended Pub. L. 104–287, § 5(36), Oct. 11, 1996, 110 Stat. 3392.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287, § 5(36)(A)

This amends 49:13908(d)(1) for clarity and consistency.

PUB. L. 104–287, § 5(36)(B)

This sets out the effective date of 49:13908.

REFERENCES IN TEXT

Section 11506, referred to in subsec. (d)(1), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–287, § 5(36)(A), substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

Subsec. (e). Pub. L. 104–287, § 5(36)(B), substituted ''January 1, 1996'' for ''the effective date of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13902 of this title.

CHAPTER 141—OPERATIONS OF CARRIERS

SUBCHAPTER I—GENERAL REQUIREMENTS

Sec.
14101. Providing transportation and service.
14102. Leased motor vehicles.
14103. Loading and unloading motor vehicles.
14104. Household goods carrier operations.

Sec.
SUBCHAPTER II—REPORTS AND RECORDS
14121. Definitions.
14122. Records: form; inspection; preservation.
14123. Financial reporting.

SUBCHAPTER I—GENERAL REQUIREMENTS

§14101. Providing transportation and service

(a) ON REASONABLE REQUEST.—A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

(b) CONTRACTS WITH SHIPPERS.—

(1) IN GENERAL.—A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) REMEDY FOR BREACH OF CONTRACT.—The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 890.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13102 of this title.

§14102. Leased motor vehicles

(a) GENERAL AUTHORITY OF SECRETARY.—The Secretary may require a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

(b) RESPONSIBLE PARTY FOR LOADING AND UNLOADING.—The Secretary shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to jurisdiction under subchapter I of chapter 135 and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 890.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11107 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14704 of this title.

§14103. Loading and unloading motor vehicles

(a) SHIPPER RESPONSIBLE FOR ASSISTING.—Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.

(b) COERCION PROHIBITED.—It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) to load or unload any part of such property onto or from such vehicle or to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle; except that this subsection shall not be construed as making unlawful any activity which is not unlawful under the National Labor Relations Act or the Act of March 23, 1932 (47 Stat. 70; 29 U.S.C. 101 et seq.), commonly known as the Norris-LaGuardia Act.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 891.)

REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (b), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Act of March 23, 1932, commonly known as the Norris-LaGuardia Act, referred to in subsec. (b), is act Mar. 23,

1932, ch. 90, 47 Stat. 70, as amended, which is classified generally to chapter 6 (§101 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 29 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11109 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14702, 14704, 14905 of this title.

§ 14104. Household goods carrier operations

(a) GENERAL REGULATORY AUTHORITY.—

(1) PAPERWORK MINIMIZATION.—The Secretary may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter I of chapter 135. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.

(2) PERFORMANCE STANDARDS.—

(A) IN GENERAL.—Regulations of the Secretary protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to jurisdiction under subchapter I of chapter 135.

(B) FACTORS TO CONSIDER.—In establishing performance standards under this paragraph, the Secretary shall take into account at least the following—

(i) the level of performance that can be achieved by a well-managed motor carrier transporting household goods;

(ii) the degree of harm to individual shippers which could result from a violation of the regulation;

(iii) the need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations;

(iv) service requirements of the carriers;

(v) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

(vi) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.

(3) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the Secretary's authority to require reports from motor carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

(b) ESTIMATES.—

(1) AUTHORITY TO PROVIDE WITHOUT COMPENSATION.—Every motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135, upon request of a prospective shipper, may provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The Secretary shall not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and proposed services.

(2) APPLICABILITY OF ANTITRUST LAWS.—Any charge for an estimate of charges provided by a motor carrier to a shipper for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).

(c) FLEXIBILITY IN WEIGHING SHIPMENTS.—The Secretary shall issue regulations that provide motor carriers providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The Secretary shall not prohibit such carriers from backweighing shipments or from basing their charges on the reweigh weights if the shipper observes both the tare and gross weighings (or, prior to such weighings, waives in writing the opportunity to observe such weighings) and such weighings are performed on the same scale.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 891.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11110 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SUBCHAPTER II—REPORTS AND RECORDS

§ 14121. Definitions

In this subchapter, the following definitions apply:

(1) CARRIER AND BROKER.—The terms ''carrier'' and ''broker'' include a receiver or trustee of a carrier and broker, respectively.

(2) ASSOCIATION.—The term ''association'' means an organization maintained by or in the interest of a group of carriers or brokers providing transportation or service subject to jurisdiction under chapter 135 that performs a service, or engages in activities, related to transportation under this part.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 892.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11141 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14303 of this title.

§ 14122. Records: form; inspection; preservation

(a) FORM OF RECORDS.—The Secretary or the Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers,

including records related to movement of traffic and receipts and expenditures of money.

(b) RIGHT OF INSPECTION.—The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

(2) inspect and copy any record of—

(A) a carrier, broker, or association; and

(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person's relation to, or transaction with, that carrier.

(c) PERIOD FOR PRESERVATION OF RECORDS.—The Secretary or Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers and brokers.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 893.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11144 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14303 of this title.

§ 14123. Financial reporting

(a) REPORTS.—

(1) ANNUAL REPORTS.—The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

(2) OTHER REPORTS.—The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

(b) MATTERS TO BE COVERED.—In determining the matters to be covered by any reports to be filed under subsection (a), the Secretary shall consider—

(1) safety needs;

(2) the need to preserve confidential business information and trade secrets and prevent competitive harm;

(3) private sector, academic, and public use of information in the reports; and

(4) the public interest.

(c) EXEMPTIONS.—

(1) FROM FILING.—The Secretary may exempt upon good cause shown any party from the financial reporting requirements of subsection (a). Any request for such exemption must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

(2) FROM PUBLIC RELEASE.—

(A) IN GENERAL.—The Secretary shall allow, upon request, a filer of a report under subsection (a) that is not a publicly held corporation or that is not subject to financial reporting requirements of the Securities and Exchange Commission, an exemption from the public release of such report.

(B) PROCEDURE.—After a request under subparagraph (A) and notice and opportunity for comment but[1] no event later than 90 days after the date of such request, the Secretary shall approve such request if the Secretary finds that the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.

(C) USE OF DATA FOR INTERNAL DOT PURPOSES.—If an exemption is granted under this paragraph, nothing shall prevent the Secretary from using data from reports filed under this subsection for internal purposes of the Department of Transportation or including such data in aggregate industry statistics released for publication if such inclusion would not render the filer's data readily identifiable.

(D) PENDING REQUESTS.—The Secretary shall not release publicly the report of a carrier making a request under subparagraph (A) while such request is pending.

(3) PERIOD OF EXEMPTIONS.—Exemptions granted under this subsection shall be for 3-year periods.

(d) STREAMLINING AND SIMPLIFICATION.—The Secretary shall streamline and simplify, to the maximum extent practicable, any reporting requirements the Secretary imposes under this section.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 893.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11145 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14303 of this title.

CHAPTER 143—FINANCE

Sec.
14301. Security interests in certain motor vehicles.
14302. Pooling and division of transportation or earnings.
14303. Consolidation, merger, and acquisition of control of motor carriers of passengers.

§ 14301. Security interests in certain motor vehicles

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combina-

[1] So in original. Probably should be followed by ''in''.

tion weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

(2) LIEN CREDITOR.—The term ''lien creditor'' means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in a case under title 11 from the date of filing of the petition in that case, and a receiver in equity from the date of appointment of the receiver.

(3) SECURITY INTEREST.—The term ''security interest'' means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

(4) PERFECTION.—The term ''perfection'', as related to a security interest, means taking action (including public filing, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

(b) REQUIREMENTS FOR PERFECTION OF SECURITY INTEREST.—A security interest in a motor vehicle owned by, or in the possession and use of, a carrier registered under section 13902 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a certificate or title, of a security interest in the motor vehicle if the security interest is indicated on the certificate;

(2) a certificate of title has not been issued and the law of the State where the principal place of business of that carrier is located requires or permits public filing or recording of, or in relation to, that security interest if there has been such a public filing or recording; and

(3) a certificate of title has not been issued and the security interest cannot be perfected under paragraph (2) of this subsection, if the security interest has been perfected under the law (including the conflict of laws rules) of the State where the principal place of business of that carrier is located.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 894.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11304 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

§ 14302. Pooling and division of transportation or earnings

(a) APPROVAL REQUIRED.—A carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 may not agree or combine with another such carrier to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section.

(b) STANDARDS FOR APPROVAL.—The Board may approve and authorize an agreement or combination between or among motor carriers of passengers, or between a motor carrier of passengers and a rail carrier of passengers if the carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

(1) will be in the interest of better service to the public or of economy of operation; and

(2) will not unreasonably restrain competition.

(c) PROCEDURE.—

(1) APPLICATION.—Any motor carrier of property may apply to the Board for approval of an agreement or combination with another such carrier to pool or divide traffic or any services or any part of their earnings by filing such agreement or combination with the Board not less than 50 days before its effective date.

(2) DETERMINATION OF IMPORTANCE AND RESTRAINT ON COMPETITION.—Prior to the effective date of the agreement or combination, the Board shall determine whether the agreement or combination is of major transportation importance and whether there is substantial likelihood that the agreement or combination will unduly restrain competition. If the Board determines that neither of these 2 factors exists, it shall, prior to such effective date and without a hearing, approve and authorize the agreement or combination, under such rules and regulations as the Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Board to be just and reasonable.

(3) HEARING.—If the Board determines either that the agreement or combination is of major transportation importance or that there is substantial likelihood that the agreement or combination will unduly restrain competition, the Board shall hold a hearing concerning whether the agreement or combination will be in the interest of better service to the public or of economy in operation and whether it will unduly restrain competition and shall suspend operation of such agreement or combination pending such hearing and final decision thereon. After such hearing, the Board shall indicate to what extent it finds that the agreement or combination will be in the interest of better service to the public or of economy in operation and will not unduly restrain competition and if assented to by all the carriers involved, shall to that extent, approve and authorize the agreement or combination, under

such rules and regulations as the Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Board to be just and reasonable.

(4) SPECIAL RULES FOR HOUSEHOLD GOODS CARRIERS.—In the case of an application for Board approval of an agreement or combination between a motor carrier providing transportation of household goods and its agents to pool or divide traffic or services or any part of their earnings, such agreement or combination shall be presumed to be in the interest of better service to the public and of economy in operation and not to restrain competition unduly if the practices proposed to be carried out under such agreement or combination are the same as or similar to practices carried out under agreements and combinations between motor carriers providing transportation of household goods to pool or divide traffic or service of any part of their earnings approved by the Interstate Commerce Commission before January 1, 1996.

(5) STREAMLINING AND SIMPLIFYING.—The Board shall streamline, simplify, and expedite, to the maximum extent practicable, the process (including any paperwork) for submission and approval of applications under this section for agreements and combinations between motor carriers providing transportation of household goods and their agents.

(d) CONDITIONS.—The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

(e) INITIATION OF PROCEEDING.—The Board may begin a proceeding under this section on its own initiative or on application.

(f) EFFECT OF APPROVAL.—A carrier may participate in an arrangement approved by or exempted by the Board under this section without the approval of any other Federal, State, or municipal body. A carrier participating in an approved or exempted arrangement is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the arrangement.

(g) CONTINUATION OF EXISTING AGREEMENTS.—Any agreements in operation under the provisions of this title on January 1, 1996, that are succeeded by this section shall remain in effect until further order of the Board.

(h) DEFINITIONS.—In this section, the following definitions apply:

(1) HOUSEHOLD GOODS.—The term ''household goods'' has the meaning such term had under section 10102(11) of this title, as in effect on December 31, 1995.

(2) TRANSPORTATION.—The term ''transportation'' means transportation that would be subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, as in effect on December 31, 1995, if such subchapter were still in effect.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 895; amended Pub. L. 104–287, § 5(37), Oct. 11, 1996, 110 Stat. 3392.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287, § 5(37)(A), (B)

This sets out the effective date of 49:14302.

PUB. L. 104–287, § 5(37)(C), (D)

This amends 49:14302(h)(1) and (2) for clarity and consistency.

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (f), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

Section 10102(11) of this title, referred to in subsec. (h)(1), was omitted and a new section 10102 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 20, 1995, 109 Stat. 804, 806, effective Jan. 1, 1996.

Subchapter II of chapter 105 of this title, referred to in subsec. (h)(2), was omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 11341 and 11342 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104–287, § 5(37)(A), substituted ''January 1, 1996'' for ''the effective date of this section''.

Subsec. (g). Pub. L. 104–287, § 5(37)(B), substituted ''January 1, 1996,'' for ''the effective date of this section''.

Subsec. (h)(1). Pub. L. 104–287, § 5(37)(C), substituted ''December 31, 1995'' for ''the day before the effective date of this section''.

Subsec. (h)(2). Pub. L. 104–287, § 5(37)(D), substituted ''December 31, 1995'' for ''the day before such effective date''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13541 of this title.

§ 14303. Consolidation, merger, and acquisition of control of motor carriers of passengers

(a) APPROVAL REQUIRED.—The following transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 may be carried out only with the approval of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 carriers into one operation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another carrier by any number of carriers.

(3) Acquisition of control of a carrier by any number of carriers.

(4) Acquisition of control of at least 2 carriers by a person that is not a carrier.

(5) Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

(b) STANDARD FOR APPROVAL.—The Board shall approve and authorize a transaction under this

section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

(1) The effect of the proposed transaction on the adequacy of transportation to the public.

(2) The total fixed charges that result from the proposed transaction.

(3) The interest of carrier employees affected by the proposed transaction.

The Board may impose conditions governing the transaction.

(c) DETERMINATION OF COMPLETENESS OF APPLICATION.—Within 30 days after the date on which an application is filed under this section, the Board shall either publish a notice of the application in the Federal Register or reject the application if it is incomplete.

(d) COMMENTS.—Written comments about an application may be filed with the Board within 45 days after the date on which notice of the application is published under subsection (c).

(e) DEADLINES.—The Board shall conclude evidentiary proceedings by the 240th day after the date on which notice of the application is published under subsection (c). The Board shall issue a final decision by the 180th day after the conclusion of the evidentiary proceedings. The Board may extend a time period under this subsection; except that the total of all such extensions with respect to any application shall not exceed 90 days.

(f) EFFECT OF APPROVAL.—A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

(g) LIMITATION ON APPLICABILITY.—This section shall not apply to transactions involving carriers whose aggregate gross operating revenues were not more than $2,000,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties.

(h) APPLICABILITY OF CERTAIN PROVISIONS.—When the Board approves and authorizes a transaction under this section in which a person not a carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 acquires control of at least 1 carrier subject to such jurisdiction, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier being acquired by that person, to the extent specified by the Board: sections 504(f), 14121–14123, 14901(a), and 14907.

(i) INTERIM APPROVAL.—Pending determination of an application filed under this section, the Board may approve, for a period of not more than 180 days, the operation of the properties sought to be acquired by the person proposing in the application to acquire those properties, when it appears that failure to do so may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public. Transportation provided by a motor carrier under a grant of approval under this subsection is subject to this part.

(j) SUPPLEMENTAL ORDERS.—When cause exists, the Board may issue appropriate orders supplemental to an order made in a proceeding under this section.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 897.)

REFERENCE IN TEXT

The antitrust laws, referred to in subsec. (f), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 11341, 11343, 11344, 11345a, 11348, 11349, and 11351 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 145—FEDERAL-STATE RELATIONS

Sec.
14501. Federal authority over intrastate transportation.
14502. Tax discrimination against motor carrier transportation property.
14503. Withholding State and local income tax by certain carriers.
14504. Registration of motor carriers by a State.
14505. State tax.

§ 14501. Federal authority over intrastate transportation

(a) MOTOR CARRIERS OF PASSENGERS.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route or relating to the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This subsection shall not apply to intrastate commuter bus operations.

(b) FREIGHT FORWARDERS AND BROKERS.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

(2) CONTINUATION OF HAWAII'S AUTHORITY.—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to

continue to regulate a motor carrier operating within the State of Hawaii.

(c) MOTOR CARRIERS OF PROPERTY.—

(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) MATTERS NOT COVERED.—Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(3) STATE STANDARD TRANSPORTATION PRACTICES.—

(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

(i) uniform cargo liability rules,

(ii) uniform bills of lading or receipts for property being transported,

(iii) uniform cargo credit rules,

(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or

(v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law, regulation, or provision meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and

(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

(C) ELECTION.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

(4) NONAPPLICABILITY TO HAWAII.—This subsection shall not apply with respect to the State of Hawaii.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 899.)

REFERENCES IN TEXT

The Surface Freight Forwarder Deregulation Act of 1986, referred to in subsec. (b)(2), is Pub. L. 99–521, Oct. 22, 1986, 100 Stat. 2993. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 10101 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11501 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13902 of this title.

§ 14502. Tax discrimination against motor carrier transportation property

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ASSESSMENT.—The term ''assessment'' means valuation for a property tax levied by a taxing district.

(2) ASSESSMENT JURISDICTION.—The term ''assessment jurisdiction'' means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) MOTOR CARRIER TRANSPORTATION PROPERTY.—The term ''motor carrier transportation property'' means property, as defined by the Secretary, owned or used by a motor carrier providing transportation in interstate commerce whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135.

(4) COMMERCIAL AND INDUSTRIAL PROPERTY.—The term ''commercial and industrial property'' means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use, and subject to a property tax levy.

(b) ACTS BURDENING INTERSTATE COMMERCE.—The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) EXCESSIVE VALUATION OF PROPERTY.—Assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) TAX ON ASSESSMENT.—Levy or collect a tax on an assessment that may not be made under paragraph (1).

(3) AD VALOREM TAX.—Levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(c) JURISDICTION.—

(1) IN GENERAL.—Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section.

(2) LIMITATION IN RELIEF.—Relief may be granted under this subsection only if the ratio of assessed value to true market value of motor carrier transportation property exceeds, by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction.

(3) BURDEN OF PROOF.—The burden of proof in determining assessed value and true market value is governed by State law.

(4) VIOLATION.—If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(A) an assessment of the motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the assessment value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all such other property; and

(B) the collection of ad valorem property tax on the motor carrier transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 900.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11503a of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14503. Withholding State and local income tax by certain carriers

(a) SINGLE STATE TAX WITHHOLDING.—

(1) IN GENERAL.—No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 or by a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

(2) EMPLOYEE DEFINED.—In this subsection, the term ''employee'' has the meaning given such term in section 31132.

(b) SPECIAL RULES.—

(1) CALCULATION OF EARNINGS.—In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of that State in which the time worked by the employee in the State or subdivision is more than 50 percent of the total time worked by the employee while employed during the calendar year.

(2) WATER CARRIERS.—A water carrier providing transportation subject to jurisdiction under subchapter II of chapter 135 shall file income tax information returns and other reports only with—

(A) the State and subdivision of residence of the employee (as shown on the employment records of the carrier); and

(B) the State and subdivision in which the employee earned more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(3) APPLICABILITY TO SAILORS.—This subsection applies to pay of a master, officer, or sailor who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal, or noncontiguous trade or in the fisheries of the United States.

(c) FILING OF INFORMATION.—A motor and motor private carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 901.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11504 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14504. Registration of motor carriers by a State

(a) DEFINITIONS.—In this section, the terms ''standards'' and ''amendments to standards'' mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

(b) GENERAL RULE.—The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in

that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

(c) SINGLE STATE REGISTRATION SYSTEM.—

(1) IN GENERAL.—The Secretary shall maintain standards for implementing a system under which—

(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) SPECIFIC REQUIREMENTS.—

(A) EVIDENCE OF FEDERAL REGISTRATION; PROOF OF INSURANCE; PAYMENT OF FEES.—Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part—

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) RECEIPTS; FEE SYSTEM.—The standards of the Secretary—

(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that—

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) PROHIBITED FEES.—The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) LIMITATION ON PARTICIPATION BY STATES.—Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 902.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11506 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13908 of this title.

§ 14505. State tax

A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—

(1) a passenger traveling in interstate commerce by motor carrier;

(2) the transportation of a passenger traveling in interstate commerce by motor carrier;

(3) the sale of passenger transportation in interstate commerce by motor carrier; or

(4) the gross receipts derived from such transportation.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 904.)

CHAPTER 147—ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

Sec.
14701. General authority.
14702. Enforcement by the regulatory authority.
14703. Enforcement by the Attorney General.
14704. Rights and remedies of persons injured by carriers or brokers.
14705. Limitation on actions by and against carriers.
14706. Liability of carriers under receipts and bills of lading.
14707. Private enforcement of registration requirement.
14708. Dispute settlement program for household goods carriers.
14709. Tariff reconciliation rules for motor carriers of property.

§ 14701. General authority

(a) INVESTIGATIONS.—The Secretary or the Board, as applicable, may begin an investigation under this part on the Secretary's or the Board's own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) COMPLAINTS.—A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

(c) DEADLINE.—A formal investigative proceeding begun by the Secretary or Board under subsection (a) of this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3d year after the date on which it was begun.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 904.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13905, 14704 of this title.

§ 14702. Enforcement by the regulatory authority

(a) IN GENERAL.—The Secretary or the Board, as applicable, may bring a civil action—

(1) to enforce section 14103 of this title; or

(2) to enforce this part, or a regulation or order of the Secretary or Board, as applicable, when violated by a carrier or broker providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title or by a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title.

(b) VENUE.—In a civil action under subsection (a)(2) of this section—

(1) trial is in the judicial district in which the carrier, foreign motor carrier, foreign motor private carrier, or broker operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

(c) STANDING.—The Board, through its own attorneys, may bring or participate in any civil action involving motor carrier undercharges.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 905.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11702 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14703. Enforcement by the Attorney General

The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings—

(1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part; and

(2) to prosecute a person violating this part or a regulation or order of the Secretary or Board or term of registration under this part.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 905.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11703 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14704. Rights and remedies of persons injured by carriers or brokers

(a) IN GENERAL.—

(1) ENFORCEMENT OF ORDER.—A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) DAMAGES FOR VIOLATIONS.—A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE.—A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) ELECTION.—

(1) COMPLAINT TO DOT OR BOARD; CIVIL ACTION.—A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or

service subject to jurisdiction under chapter 135.

(2) ORDER OF DOT OR BOARD.—

(A) IN GENERAL.—When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay damages only when the proceeding is on complaint.

(B) ENFORCEMENT BY CIVIL ACTION.—The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

(d) PROCEDURE.—

(1) IN GENERAL.—When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) PARTIES.—All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(e) ATTORNEY'S FEES.—The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 905.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14705 of this title.

§ 14705. Limitation on actions by and against carriers

(a) IN GENERAL.—A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) OVERCHARGES.—A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) DAMAGES.—A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

(d) EXTENSIONS.—The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) PAYMENT.—A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

(f) GOVERNMENT TRANSPORTATION.—This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of—

(1) payment of the rate for the transportation or service involved;

(2) subsequent refund for overpayment of that rate; or

(3) deduction made under section 3726 of title 31.

(g) ACCRUAL DATE.—A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 907.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14706. Liability of carriers under receipts and bills of lading

(a) GENERAL LIABILITY.—

(1) MOTOR CARRIERS AND FREIGHT FORWARDERS.—A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or chapter 105 are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff under section 13702. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) FREIGHT FORWARDER.—A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 to receive property from a consignor, the motor carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

(b) APPORTIONMENT.—The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c) SPECIAL RULES.—

(1) MOTOR CARRIERS.—

(A) SHIPPER WAIVER.—Subject to the provisions of subparagraph (B), a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 may, subject to the provisions of this chapter (including with respect to a motor carrier, the requirements of section 13710(a)), establish rates for the transportation of property (other than household goods described in section 13102(10)(A)) under which the liability of the carrier for such property is limited to a value established by written or electronic declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation.

(B) CARRIER NOTIFICATION.—If the motor carrier is not required to file its tariff with the Board, it shall provide under section 13710(a)(1) to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

(C) PROHIBITION AGAINST COLLECTIVE ESTABLISHMENT.—No discussion, consideration, or approval as to rules to limit liability under this subsection may be undertaken by carriers acting under an agreement approved pursuant to section 13703.

(2) WATER CARRIERS.—If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(d) CIVIL ACTIONS.—

(1) AGAINST DELIVERING CARRIER.—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) AGAINST CARRIER RESPONSIBLE FOR LOSS.—A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) JURISDICTION OF COURTS.—A civil action under this section may be brought in a United States district court or in a State court.

(4) JUDICIAL DISTRICT DEFINED.—In this section, ''judicial district'' means—

(A) in the case of a United States district court, a judicial district of the United States; and

(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) MINIMUM PERIOD FOR FILING CLAIMS.—

(1) IN GENERAL.—A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2

years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) SPECIAL RULES.—For the purposes of this subsection—

(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(B) communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

(f) LIMITING LIABILITY OF HOUSEHOLD GOODS CARRIERS TO DECLARED VALUE.—A carrier or group of carriers subject to jurisdiction under subchapter I or III of chapter 135 may petition the Board to modify, eliminate, or establish rates for the transportation of household goods under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement.

(g) MODIFICATIONS AND REFORMS.—

(1) STUDY.—The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

(2) FACTORS TO CONSIDER.—In conducting the study, the Secretary, at a minimum, shall consider—

(A) the efficient delivery of transportation services;

(B) international and intermodal harmony;

(C) the public interest; and

(D) the interest of carriers and shippers.

(3) REPORT.—Not later than 12 months after January 1, 1996, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 907; amended Pub. L. 104–287, §5(38), Oct. 11, 1996, 110 Stat. 3392.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10730 and 11707 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

1996—Subsec. (g)(3). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 sections 1337, 1445.

§14707. Private enforcement of registration requirement

(a) IN GENERAL.—If a person provides transportation by motor vehicle or service in clear violation of section 13901–13904 or 13906, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this subsection, trial is in the judicial district in which the person who violated that section operates.

(b) PROCEDURE.—A copy of the complaint in a civil action under subsection (a) shall be served on the Secretary and a certificate of service must appear in the complaint filed with the court. The Secretary may intervene in a civil action under subsection (a). The Secretary may notify the district court in which the action is pending that the Secretary intends to consider the matter that is the subject of the complaint in a proceeding before the Secretary. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Secretary.

(c) ATTORNEY'S FEES.—In a civil action under subsection (a), the court may determine the amount of and award a reasonable attorney's fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 910.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11708 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§14708. Dispute settlement program for household goods carriers

(a) OFFERING SHIPPERS ARBITRATION.—As a condition of registration under section 13902 or 13903, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 must agree to offer in accordance with this section to shippers of household goods arbitration as a means of settling disputes between such carriers and shippers of household goods concerning damage or loss to the household goods transported.

(b) ARBITRATION REQUIREMENTS.—

(1) PREVENTION OF SPECIAL ADVANTAGE.—The arbitration that is offered must be designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business.

(2) NOTICE OF ARBITRATION PROCEDURE.—The carrier must provide the shipper an adequate notice of the availability of neutral arbitration, including a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and disclosure of the legal effects of election to utilize arbitration. Such notice must be given to persons for

whom household goods are to be transported by the carrier before such goods are tendered to the carrier for transportation.

(3) PROVISION OF FORMS.—Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action to resolve a dispute under arbitration.

(4) INDEPENDENCE OF ARBITRATOR.—Each person authorized to arbitrate or otherwise settle disputes must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously. The carrier must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decisionmaking process.

(5) APPORTIONMENT OF COSTS.—No shipper may be charged more than half of the cost for instituting an arbitration proceeding that is brought under this section. In the decision, the arbitrator may determine which party shall pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

(6) REQUESTS.—The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for $1,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than $1,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.

(7) ORAL PRESENTATION OF EVIDENCE.—The arbitrator may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute (or a party's representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.

(8) DEADLINE FOR DECISION.—The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered; except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, and compensation for damages.

(c) LIMITATION ON USE OF MATERIALS.—Materials and information obtained in the course of a decision making process to settle a dispute by arbitration under this section may not be used to bring an action under section 14905.

(d) ATTORNEY'S FEES TO SHIPPERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney's fees if—

(1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;

(2) the shipper prevails in such court action; and

(3)(A) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or

(B) the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

(e) ATTORNEY'S FEES TO CARRIERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation, or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, such carrier may be awarded reasonable attorney's fees by the court only if the shipper brought such action in bad faith—

(1) after resolution of such dispute through arbitration under this section; or

(2) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—

(A) the period provided under subsection (b)(8) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and

(B) a decision resolving such dispute is rendered.

(f) LIMITATION OF APPLICABILITY TO COLLECT-ON-DELIVERY TRANSPORTATION.—The provisions of this section shall apply only in the case of collect-on-delivery transportation of household goods.

(g) REVIEW BY SECRETARY.—Not later than 18 months after January 1, 1996, the Secretary shall complete a review of the dispute settlement program established under this section. If, after notice and opportunity for comment, the Secretary determines that changes are necessary to such program to ensure the fair and equitable resolution of disputes under this section, the Secretary shall implement such changes and transmit a report to Congress on such changes.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 910; amended Pub. L. 104–287, § 5(38), Oct. 11, 1996, 110 Stat. 3392.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11711 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of this section''.

§ 14709. Tariff reconciliation rules for motor carriers of property

Subject to review and approval by the Board, motor carriers subject to jurisdiction under subchapter I of chapter 135 (other than motor carriers providing transportation of household goods) and shippers may resolve, by mutual consent, overcharge and under-charge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with section 13702 or, with respect to transportation provided before January 1, 1996, sections 10761 and 10762, as in effect on December 31, 1995. Resolution of such claims among the parties shall not subject any party to the penalties for departing from a tariff.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 912; amended Pub. L. 104–287, § 5(39), Oct. 11, 1996, 110 Stat. 3392.)

HISTORICAL AND REVISION NOTES

PUB. L. 104–287

This amends 49:14709 by setting out the effective date of 49:14709 and for clarity and consistency.

REFERENCES IN TEXT

Sections 10761 and 10762, referred to in text, were omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11712 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of this section'' and ''December 31, 1995'' for ''the day before the effective date of this section''.

CHAPTER 149—CIVIL AND CRIMINAL PENALTIES

Sec.
14901. General civil penalties.
14902. Civil penalty for accepting rebates from carrier.
14903. Tariff violations.
14904. Additional rate violations.
14905. Penalties for violations of rules relating to loading and unloading motor vehicles.
14906. Evasion of regulation of carriers and brokers.
14907. Recordkeeping and reporting violations.
14908. Unlawful disclosure of information.
14909. Disobedience to subpoenas.
14910. General civil penalty when specific penalty not provided.
14911. Punishment of corporation for violations committed by certain individuals.
14912. Weight-bumping in household goods transportation.
14913. Conclusiveness of rates in certain prosecutions.
14914. Civil penalty procedures.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 13709 of this title.

§ 14901. General civil penalties

(a) REPORTING AND RECORDKEEPING.—A person required to make a report to the Secretary or the Board, answer a question, or make, prepare, or preserve a record under this part concerning transportation subject to jurisdiction under subchapter I or III of chapter 135 or transportation by a foreign carrier registered under section 13902, or an officer, agent, or employee of that person that—

(1) does not make the report;

(2) does not specifically, completely, and truthfully answer the question;

(3) does not make, prepare, or preserve the record in the form and manner prescribed;

(4) does not comply with section 13901; or

(5) does not comply with section 13902(c);

is liable to the United States for a civil penalty of not less than $500 for each violation and for each additional day the violation continues; except that, in the case of a person who is not registered under this part to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 13901 with respect to providing transportation of passengers, the amount of the civil penalty shall not be less than $2,000 for each violation and for each additional day the violation continues.

(b) TRANSPORTATION OF HAZARDOUS WASTES.—A person subject to jurisdiction under subchapter I of chapter 135, or an officer, agent, or employee of that person, and who is required to comply with section 13901 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall be liable to the United States for a civil penalty not to exceed $20,000 for each violation.

(c) FACTORS TO CONSIDER IN DETERMINING AMOUNT.—In determining and negotiating the amount of a civil penalty under subsection (a) or (d) concerning transportation of household goods, the degree of culpability, any history of prior such conduct, the degree of harm to shipper or shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require shall be taken into account.

(d) PROTECTION OF HOUSEHOLD GOODS SHIPPERS.—If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Secretary or the Board relating to protection of individual shippers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not less than $1,000 for each violation and for each additional day during which the violation continues.

(e) VIOLATION RELATING TO TRANSPORTATION OF HOUSEHOLD GOODS.—Any person that knowingly engages in or knowingly authorizes an agent or other person—

(1) to falsify documents used in the transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 which evidence the weight of a shipment; or

(2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment;

is liable to the United States for a civil penalty of not less than $2,000 for each violation and of not less than $5,000 for each subsequent violation. Any State may bring a civil action in the United States district courts to compel a person to pay a civil penalty assessed under this subsection.

(f) VENUE.—Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which—

(1) the carrier or broker has its principal office;

(2) the carrier or broker was authorized to provide transportation or service under this part when the violation occurred;

(3) the violation occurred; or

(4) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

(g) BUSINESS ENTERTAINMENT EXPENSES.—

(1) IN GENERAL.—Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not constitute a violation of this part if that expense would not be unlawful if incurred by a person not subject to this part.

(2) COST OF SERVICE.—Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 913.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b), is title II of Pub. L. 89–272, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. Section 3001 of the Act is classified to section 6921 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10751 and 11901 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13907, 14303 of this title.

§ 14902. Civil penalty for accepting rebates from carrier

A person—

(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 for transportation under this part or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702;

is liable to the United States for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 915.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11902 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14913 of this title.

§ 14903. Tariff violations

(a) CIVIL PENALTY FOR UNDERCHARGING AND OVERCHARGING.—A person that offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 at a rate different than the rate in effect under section 13702 is liable to the United States for[1] civil penalty of not more than $100,000 for each violation.

(b) GENERAL CRIMINAL PENALTY.—A carrier providing transportation or service subject to jurisdiction under chapter 135 or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to jurisdiction under that chapter, that willfully does not observe its tariffs as required under section 13702, shall be fined under title 18 or imprisoned not more than 2 years, or both.

(c) ACTIONS OF AGENTS AND EMPLOYEES.—When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) VENUE.—Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

[1] So in original. Probably should be followed by ''a''.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 915.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11903 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14913 of this title.

§ 14904. Additional rate violations

(a) REBATES BY AGENTS.—A person, or an officer, employee, or agent of that person, that—

(1) offers, grants, gives, solicits, accepts, or receives a rebate for concession, in violation of a provision of this part related to motor carrier transportation subject to jurisdiction under subchapter I of chapter 135; or

(2) by any means assists or permits another person to get transportation that is subject to jurisdiction under that subchapter at less than the rate in effect for that transportation under section 13702,

is liable to the United States for a civil penalty of $200 for the first violation and $250 for a subsequent violation.

(b) UNDERCHARGING.—

(1) FREIGHT FORWARDER.—A freight forwarder providing service subject to jurisdiction under subchapter III of chapter 135, or an officer, agent, or employee of that freight forwarder, that assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less than the rate in effect for that service under section 13702, is liable to the United States for a civil penalty of not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

(2) OTHERS.—A person that by any means gets, or attempts to get, service provided under subchapter III of chapter 135 at less than the rate in effect for that service under section 13702, is liable to the United States for a civil penalty of not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 915.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11904 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14905. Penalties for violations of rules relating to loading and unloading motor vehicles

(a) CIVIL PENALTIES.—Whoever knowingly authorizes, consents to, or permits a violation of subsection (a) or (b) of section 14103 or who knowingly violates subsection (a) of such section is liable to the United States for a civil penalty of not more than $10,000 for each violation.

(b) CRIMINAL PENALTIES.—Whoever knowingly violates section 14103(b) of this title shall be fined under title 18 or imprisoned not more than 2 years, or both.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 916.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11902a of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14708 of this title.

§ 14906. Evasion of regulation of carriers and brokers

A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of $200 for the first violation and at least $250 for a subsequent violation.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 916.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11906 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14907. Recordkeeping and reporting violations

A person required to make a report to the Secretary or the Board, as applicable, answer a question, or make, prepare, or preserve a record under this part about transportation subject to jurisdiction under subchapter I or III of chapter 135, or an officer, agent, or employee of that person, that—

(1) does not make that report;

(2) does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary or Board, as applicable, requires the question to be answered;

(3) does not make, prepare, or preserve that record in the form and manner prescribed;

(4) falsifies, destroys, mutilates, or changes that report or record;

(5) files a false report or record;

(6) makes a false or incomplete entry in that record about a business related fact or transaction; or

(7) makes, prepares, or preserves a record in violation of an applicable regulation or order of the Secretary or Board;

is liable to the United States for a civil penalty of not more than $5,000.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 916.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11909 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14303 of this title.

§ 14908. Unlawful disclosure of information

(a) DISCLOSURE OF SHIPMENT AND ROUTING INFORMATION.—

(1) VIOLATIONS.—A carrier or broker providing transportation subject to jurisdiction

under subchapter I, II, or III of chapter 135 or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not disclose to another person, except the shipper or consignee, and a person may not solicit, or receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(2) PENALTY.—A person violating paragraph (1) of this subsection is liable to the United States for a civil penalty of not more than $2,000.

(b) LIMITATION ON STATUTORY CONSTRUCTION.—This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 917.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11910 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14909. Disobedience to subpoenas

Whoever does not obey a subpoena or requirement of the Secretary or the Board to appear and testify or produce records shall be fined under title 18 or imprisoned not more than 1 year, or both.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 917.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11913 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14910. General civil penalty when specific penalty not provided

When another civil penalty is not provided under this chapter, a person that violates a provision of this part or a regulation or order prescribed under this part, or a condition of a registration under this part related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135 or a condition of a registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable to the United States for a civil penalty of $500 for each violation. A separate violation occurs each day the violation continues.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 917.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14911. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 917.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11915 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14912. Weight-bumping in household goods transportation

(a) WEIGHT-BUMPING DEFINED.—For the purposes of this section, ''weight-bumping'' means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods which is subject to jurisdiction under subchapter I or III of chapter 135.

(b) PENALTY.—Whoever has been found to have committed weight-bumping shall be fined under title 18 or imprisoned not more than 2 years, or both.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 918.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11917 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13907 of this title.

§ 14913. Conclusiveness of rates in certain prosecutions

When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903. A departure, or offer to depart, from that published or filed rate is a violation of those sections.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 918.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11916 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14914. Civil penalty procedures

(a) IN GENERAL.—After notice and an opportunity for a hearing, a person found by the Surface Transportation Board to have violated a provision of law that the Board carries out or a regulation prescribed under that law by the Board that is related to transportation which occurs under subchapter II of chapter 135 for which a civil penalty is provided, is liable to the United States for the civil penalty provided. The amount of the civil penalty shall be assessed by the Board by written notice. In determining the amount of the penalty, the Board shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) COMPROMISE.—The Board may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) COLLECTION.—If a person fails to pay an assessment of a civil penalty after it has become final, the Board may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) REFUNDS.—The Board may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within 1 year from the date of payment; and

(2) the Board finds that the penalty was unlawfully, improperly, or excessively imposed.

(Added Pub. L. 104–88, title I, § 103, Dec. 29, 1995, 109 Stat. 918.)

PART C—PIPELINE CARRIERS

AMENDMENTS

1996—Pub. L. 104–287, § 5(40), Oct. 11, 1996, 110 Stat. 3392, made technical amendment to part heading.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 28 section 2342.

CHAPTER 151—GENERAL PROVISIONS

Sec.
15101. Transportation policy.
15102. Definitions.
15103. Remedies as cumulative.

AMENDMENTS

1996—Pub. L. 104–287, § 5(41), Oct. 11, 1996, 110 Stat. 3392, struck out duplicative chapter heading.

§ 15101. Transportation policy

(a) IN GENERAL.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the national defense, it is the policy of the United States Government to oversee of[1] the modes of transportation and in overseeing those modes—

(1) to recognize and preserve the inherent advantage of each mode of transportation;

(2) to promote safe, adequate, economical, and efficient transportation;

(3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

(5) to cooperate with each State and the officials of each State on transportation matters; and

(6) to encourage fair wages and working conditions in the transportation industry.

(b) ADMINISTRATION TO CARRY OUT POLICY.—This part shall be administered and enforced to carry out the policy of this section.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 921.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

GAO REPORT

Section 106(b) of Pub. L. 104–88 provided that: ''Within 3 years after the effective date of this Act [Jan. 1, 1996, except as otherwise provided, see Effective Date note set out under section 701 of this title], the Comptroller General shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report regarding the impact of regulations under part C [of subtitle IV] of title 49, United States Code, on the competitiveness of pipelines and recommend whether to continue, revise, or sunset such regulations. Congress shall take into account the findings of this report when considering the Board's [Surface Transportation Board] reauthorization.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15302 of this title.

§ 15102. Definitions

In this part—

(1) BOARD.—The term ''Board'' means the Surface Transportation Board.

(2) PIPELINE CARRIER.—The term ''pipeline carrier'' means a person providing pipeline transportation for compensation.

(3) RATE.—The term ''rate'' means a rate or charge for transportation.

(4) STATE.—The term ''State'' means a State of the United States and the District of Columbia.

(5) TRANSPORTATION.—The term ''transportation'' includes—

(A) property, facilities, instrumentalities, or equipment of any kind related to the movement of property, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, transfer in transit, storage, handling, and interchange of property.

(6) UNITED STATES.—The term ''United States'' means the States of the United States and the District of Columbia.

[1] So in original.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 921.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10102 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15103. Remedies as cumulative

Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 922.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10103 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 153—JURISDICTION

Sec.
15301. General pipeline jurisdiction.
15302. Authority to exempt pipeline carrier transportation.

AMENDMENTS

1996—Pub. L. 104–287, § 5(42), Oct. 11, 1996, 110 Stat. 3392, struck out duplicative chapter heading.

§ 15301. General pipeline jurisdiction

(a) IN GENERAL.—The Board has jurisdiction over transportation by pipeline, or by pipeline and railroad or water, when transporting a commodity other than water, gas, or oil. Jurisdiction under this subsection applies only to transportation in the United States between a place in—

(1) a State and a place in another State;

(2) the District of Columbia and another place in the District of Columbia;

(3) a State and a place in a territory or possession of the United States;

(4) a territory or possession of the United States and a place in another such territory or possession;

(5) a territory or possession of the United States and another place in the same territory or possession;

(6) the United States and another place in the United States through a foreign country; or

(7) the United States and a place in a foreign country.

(b) NO JURISDICTION OVER INTRASTATE TRANSPORTATION.—The Board does not have jurisdiction under subsection (a) over the transportation of property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this part.

(c) PROTECTION OF STATES POWERS.—This part does not affect the power of a State, in exercising its police power, to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Board under this chapter unless the State requirement is inconsistent with an order of the Board issued under this part or is prohibited under this part.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 922.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10501 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

§ 15302. Authority to exempt pipeline carrier transportation

(a) IN GENERAL—In a matter related to a pipeline carrier providing transportation subject to jurisdiction under this chapter, the Board shall exempt a person, class of persons, or a transaction or service when 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 15101; 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) INITIATION OF PROCEEDING.—The Board may, where appropriate, begin a proceeding under this section on its own initiative or an interested party.

(c) PERIOD OF EXEMPTION.—The Board may specify the period of time during which an exemption granted under this section is effective.

(d) REVOCATION.—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 15101.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 923.)

CHAPTER 155—RATES

Sec.
15501. Standards for pipeline rates, classifications, through routes, rules, and practices.
15502. Authority for pipeline carriers to establish rates, classifications, rules, and practices.
15503. Authority and criteria: rates, classifications, rules, and practices prescribed by Board.
15504. Government traffic.
15505. Prohibition against discrimination by pipeline carriers.
15506. Facilities for interchange of traffic.

§ 15501. Standards for pipeline rates, classifications, through routes, rules, and practices

(a) REASONABLENESS.—A rate, classification, rule, or practice related to transportation or service provided by a pipeline carrier subject to this part must be reasonable. A through route established by such a carrier must be reasonable.

(b) NONDISCRIMINATION.—A pipeline carrier providing transportation subject to this part

may not discriminate in its rates against a connecting line of any other pipeline, rail, or water carrier providing transportation subject to this subtitle or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 923.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

§ 15502. Authority for pipeline carriers to establish rates, classifications, rules, and practices

A pipeline carrier providing transportation or service subject to this part shall establish—

(1) rates and classifications for transportation and service it may provide under this part; and

(2) rules and practices on matters related to that transportation or service.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 923.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10702 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15503. Authority and criteria: rates, classifications, rules, and practices prescribed by Board

(a) IN GENERAL.—When the Board, after a full hearing, decides that a rate charged or collected by a pipeline carrier for transportation subject to this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the rate, classification, rule, or practice to be followed. In prescribing the rate, classification, rule, or practice, the Board may utilize rate reasonableness procedures that provide an effective simulation of a market-based price for a stand alone pipeline. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

(b) FACTORS TO CONSIDER.—When prescribing a rate, classification, rule, or practice for transportation or service by a pipeline carrier, the Board shall consider, among other factors—

(1) the effect of the prescribed rate, classification, rule, or practice on the movement of traffic by that carrier;

(2) the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide that transportation or service; and

(3) the availability of other economic transportation alternatives.

(c) PROCEEDING.—The Board may begin a proceeding under this section on complaint. A complaint under this section must contain a full statement of the facts and the reasons for the complaint and must be made under oath.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 924.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10704 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15504. Government traffic

A pipeline carrier providing transportation or service for the United States Government may transport property for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 924.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10721 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 3726.

§ 15505. Prohibition against discrimination by pipeline carriers

A pipeline carrier providing transportation or service subject to this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 924.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10741 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15506. Facilities for interchange of traffic

A pipeline carrier providing transportation subject to this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of property to and from, its respective line and a connecting line of a pipeline, rail, or water carrier under this subtitle.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 924.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10742 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 157—OPERATIONS OF CARRIERS

SUBCHAPTER A—GENERAL REQUIREMENTS

Sec.
15701. Providing transportation and service.

Sec.

SUBCHAPTER B—OPERATIONS OF CARRIERS

15721. Definitions.
15722. Records: form; inspection; preservation.
15723. Reports by carriers, lessors, and associations.

AMENDMENTS

1996—Pub. L. 104–287, § 5(43)(A), Oct. 11, 1996, 110 Stat. 3392, struck out duplicative chapter heading and made technical amendments to items for subchapters A and B.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 16101, 16102 of this title.

SUBCHAPTER A—GENERAL REQUIREMENTS

AMENDMENTS

1996—Pub. L. 104–287, § 5(43)(B)(i), Oct. 11, 1996, 110 Stat. 3393, made technical amendment to subchapter heading.

§ 15701. Providing transportation and service

(a) SERVICE ON REASONABLE REQUEST.—A pipeline carrier providing transportation or service under this part shall provide the transportation or service on reasonable request.

(b) RATES AND OTHER TERMS.—A pipeline carrier shall also provide to any person, on request, the carrier's rates and other service terms. The response by a pipeline carrier to a request for the carrier's rates and other service terms shall be—

(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

(2) promptly made available in electronic form.

(c) LIMITATION ON RATE INCREASES AND CHANGES TO SERVICE TERMS.—A pipeline carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

(1) has requested such rates or terms under subsection (b); or

(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

(d) PROVISION OF SERVICE.—A pipeline carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b) or (c).

(e) REGULATIONS.—The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. The regulations may modify the 20-day period specified in subsection (c). Final regulations shall be adopted by the Board not later than 180 days after January 1, 1996.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 925; amended Pub. L. 104–287, § 5(44), Oct. 11, 1996, 110 Stat. 3393.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–287 substituted ''January 1, 1996'' for ''the effective date of this section''.

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.

SUBCHAPTER B—OPERATIONS OF CARRIERS

AMENDMENTS

1996—Pub. L. 104–287, § 5(43)(B)(ii), Oct. 11, 1996, 110 Stat. 3393, made technical amendment to subchapter heading.

§ 15721. Definitions

In this subchapter, the following definitions apply:

(1) CARRIER, LESSOR.—The terms ''carrier'' and ''lessor'' include a receiver or trustee of a pipeline carrier and lessor, respectively.

(2) LESSOR.—The term ''lessor'' means a person owning a pipeline that is leased to and operated by a carrier providing transportation under this part.

(3) ASSOCIATION.—The term ''association'' means an organization maintained by or in the interest of a group of pipeline carriers that performs a service, or engages in activities, related to transportation under this part.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11141 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15722. Records: form; inspection; preservation

(a) FORM OF RECORDS.—The Board may prescribe the form of records required to be prepared or compiled under this subchapter by pipeline carriers and lessors, including records related to movement of traffic and receipts and expenditures of money.

(b) INSPECTION.—The Board, or an employee designated by the Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a pipeline carrier or lessor; and

(2) inspect and copy any record of—

(A) a pipeline carrier, lessor, or association; and

(B) a person controlling, controlled by, or under common control with a pipeline carrier if the Board considers inspection relevant to that person's relation to, or transaction with, that carrier.

(c) PRESERVATION PERIOD.—The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by pipeline carriers and lessors.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 926.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11144 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16101, 16103 of this title.

§ 15723. Reports by carriers, lessors, and associations

(a) FILING OF REPORTS.—The Board may require pipeline carriers, lessors, and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it.

(b) UNDER OATH.—Any report under this section shall be made under oath.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 926.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11145 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 159—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec.
15901. General authority.
15902. Enforcement by the Board.
15903. Enforcement by the Attorney General.
15904. Rights and remedies of persons injured by certain carriers.[1]
15905. Limitation on actions by and against pipeline carriers.
15906. Liability of pipeline carriers under receipts and bills of lading.

AMENDMENTS

1996—Pub. L. 104–287, § 5(45)(B), Oct. 11, 1996, 110 Stat. 3393, struck out item 15907 ''Liability when property is delivered in violation of routing instructions''.

Pub. L. 104–287, § 5(45)(A), Oct. 11, 1996, 110 Stat. 3393, which directed amendment of chapter analysis by striking ''CHAPTER 159—ENFORCEMENT; INVESTIGATIONS, RIGHTS, AND REMEDIES'', was executed by striking the duplicative chapter heading which read ''CHAPTER 159—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES'' to reflect the probable intent of Congress.

§ 15901. General authority

(a) INVESTIGATION; COMPLIANCE ORDER.—Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a pipeline carrier is violating this part, the Board shall take appropriate action to compel compliance with this part. The Board shall provide the carrier notice of the investigation and an opportunity for a proceeding.

(b) COMPLAINT.—A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a pipeline carrier providing transportation or service subject to this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a pipeline carrier providing transportation subject to this part because of the absence of direct damage to the complainant.

(c) AUTOMATIC DISMISSAL.—A formal investigative proceeding begun by the Board under subsection (a) is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the 3d year after the date on which it was begun.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 926.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15904 of this title.

§ 15902. Enforcement by the Board

The Board may bring a civil action to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a pipeline carrier providing transportation subject to this part.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 927.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11702 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15903. Enforcement by the Attorney General

(a) ON BEHALF OF BOARD.—The Attorney General may, and on request of the Board shall, bring court proceedings to enforce this part or a regulation or order of the Board and to prosecute a person violating this part or a regulation or order of the Board issued under this part.

(b) ON BEHALF OF OTHERS.—The United States Government may bring a civil action on behalf of a person to compel a pipeline carrier providing transportation or service subject to this part to provide that transportation or service to that person in compliance with this part at the same rate charged, or on conditions as favorable as those given by the carrier, for like traffic under similar conditions to another person.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 927.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11703 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15904. Rights and remedies of persons injured by pipeline carriers

(a) ENFORCEMENT OF ORDERS.—A person injured because a pipeline carrier providing transportation or service subject to this part does not obey an order of the Board, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

(b) LIABILITY OF CARRIER.—

[1] So in original. Does not conform to section catchline.

(1) EXCESSIVE CHARGES.—A pipeline carrier providing transportation subject to this part is liable to a person for amounts charged that exceed the applicable rate for the transportation.

(2) DAMAGES.—A pipeline carrier providing transportation subject to this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.

(c) COMPLAINTS.—

(1) FILING.—A person may file a complaint with the Board under section 11501(b)[1] or bring a civil action under subsection (b) to enforce liability against a pipeline carrier providing transportation subject to this part.

(2) PAYMENT DEADLINE.—When the Board makes an award under subsection (b), the Board shall order the carrier to pay the amount awarded by a specific date. The Board may order a carrier providing transportation subject to this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier does not pay the amount awarded by the date payment was ordered to be made.

(d) CIVIL ACTIONS.—

(1) COMPLAINT.—When a person begins a civil action under subsection (b) to enforce an order of the Board requiring the payment of damages by a pipeline carrier providing transportation subject to this part, the text of the order of the Board must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) ATTORNEY'S FEES.—The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 927.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15905 of this title.

[1] So in original. Probably should be a reference to section 15901(b).

§ 15905. Limitation on actions by and against pipeline carriers

(a) IN GENERAL.—A pipeline carrier providing transportation or service subject to this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

(b) OVERCHARGES.—A person must begin a civil action to recover overcharges under section 15904(b)(1) within 3 years after the claim accrues. If an election to file a complaint with the Board is made under section 15904(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) DAMAGES.—A person must file a complaint with the Board to recover damages under section 15904(b)(2) within 2 years after the claim accrues.

(d) EXTENSIONS.—The limitation periods under subsection (b) are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsection (b) and the 2-year period under subsection (c) are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) PAYMENT.—A person must begin a civil action to enforce an order of the Board against a carrier for the payment of money within one year after the date the order required the money to be paid.

(f) GOVERNMENT TRANSPORTATION.—This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

(1) payment of the rate for the transportation or service involved,

(2) subsequent refund for overpayment of that rate, or

(3) deduction made under section 3726 of title 31,

whichever is later.

(g) ACCRUAL DATE.—A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 928.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15906. Liability of pipeline carriers under receipts and bills of lading

(a) GENERAL LIABILITY.—A pipeline carrier providing transportation or service subject to this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier

that delivers the property and is providing transportation or service subject to jurisdiction under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by the carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading. Failure to issue a receipt or bill of lading does not affect the liability of a carrier.

(b) APPORTIONMENT.—The carrier issuing the receipt or bill of lading under subsection (a) or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c) CIVIL ACTIONS.—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a line or route.

(d) MINIMUM PERIOD FOR FILING CLAIMS.—A pipeline carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(2) communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 929.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11707 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

CHAPTER 161—CIVIL AND CRIMINAL PENALTIES

Sec.
16101. General civil penalties.
16102. Recordkeeping and reporting violations.
16103. Unlawful disclosure of information.
16104. Disobedience to subpenas.
16105. General criminal penalty when specific penalty not provided.
16106. Punishment of corporation for violations committed by certain individuals.

AMENDMENTS

1996—Pub. L. 104–287, § 5(46), Oct. 11, 1996, 110 Stat. 3393, struck out duplicative chapter heading.

§ 16101. General civil penalties

(a) GENERAL.—Except as otherwise provided in this section, a pipeline carrier providing transportation subject to this part, an officer or agent of that carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States for a civil penalty of not more than $5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

(b) RECORDKEEPING AND REPORTING.—

(1) RECORDS.—A person required under chapter 157 to make, prepare, preserve, or submit to the Board a record concerning transportation subject to this part that does not make, prepare, preserve, or submit that record as required under that chapter, is liable to the United States for a civil penalty of $500 for each violation.

(2) INSPECTION.—A carrier providing transportation subject to this part, and a lessor, receiver, or trustee of that carrier, violating section 15722, is liable to the United States for a civil penalty of $100 for each violation.

(3) REPORTS.—A carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that carrier, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States for a civil penalty of $100 for each violation.

(4) CONTINUED VIOLATION.—A separate violation occurs for each day violation under this subsection continues.

(d)[1] VENUE.—Trial in a civil action under this section is in the judicial district in which the carrier has its principal operating office.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 930.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11901 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 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.

§ 16102. Recordkeeping and reporting violations

A person required to make a report to the Board, or make, prepare, or preserve a record,

[1] So in original. No subsec. (c) has been enacted.

under chapter 157 about transportation subject to this part that knowingly and willfully—

(1) makes a false entry in the report or record,

(2) destroys, mutilates, changes, or by another means falsifies the record,

(3) does not enter business related facts and transactions in the record,

(4) makes, prepares, or preserves the record in violation of a regulation or order of the Board, or

(5) files a false report or record with the Board,

shall be fined under title 18 or imprisoned not more than 2 years, or both.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 930.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11909 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 16103. Unlawful disclosure of information

(a) GENERAL PROHIBITION.—A pipeline carrier providing transportation subject to this part, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this part without the consent of the shipper or consignee, if that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, is liable to the United States for a civil penalty of not more than $1,000.

(b) LIMITATION ON STATUTORY CONSTRUCTION.—This part does not prevent a pipeline carrier providing transportation under this part from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(c) BOARD EMPLOYEE.—An employee of the Board delegated to make an inspection or examination under section 15722 who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined under title 18 or imprisoned for not more than 6 months, or both.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 931.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11910 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 16104. Disobedience to subpenas

Whoever does not obey a subpena or requirement of the Board to appear and testify or produce records shall be fined under title 18 or imprisoned not more than 1 year, or both.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 931.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11913 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 16105. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a pipeline carrier providing transportation subject to this part, and when that carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined under title 18 or imprisoned not more than 2 years, or both. A separate violation occurs each day a violation of this part continues.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 931.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 16106. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this subtitle if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a pipeline carrier providing transportation or service subject to this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

(Added Pub. L. 104–88, title I, § 106(a), Dec. 29, 1995, 109 Stat. 931.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11915 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

Chapter		Sec.
201.	**General**	**20101**
203.	**Safety Appliances**	**20301**
205.	**Signal Systems**	**20501**
207.	**Locomotives**	**20701**
209.	**Accidents and Incidents**	**20901**
211.	**Hours of Service**	**21101**
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PART B—ASSISTANCE

221.	**Local Rail Freight Assistance**	**22101**