

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109-59 added par. (3).

§ 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, §2(1 et seq.), July 18, 1958, 72 Stat. 384, 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.

§13710. Additional billing and collecting practices

(a) **MISCELLANEOUS PROVISIONS.**—