

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 and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods.

(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 \$10,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than \$10,000 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, compensation for damages, and an order requiring the payment of additional carrier charges.

(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) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;

(B) 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

(C) 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; Pub. L. 106-159, title II, §209(b), Dec. 9, 1999, 113 Stat. 1764; Pub. L. 109-59, title IV, §4208, Aug. 10, 2005, 119 Stat. 1757.)

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

2005—Subsec. (a). Pub. L. 109-59, §4208(a), inserted “and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods” before period at end.

Subsec. (b)(6). Pub. L. 109-59, §4208(b), substituted “\$10,000” for “\$5,000” in two places.

Subsec. (b)(8). Pub. L. 109-59, §4208(c), substituted “compensation for damages, and an order requiring the payment of additional carrier charges” for “and compensation for damages”.

Subsec. (d)(3). Pub. L. 109-59, §4208(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

1999—Subsec. (b)(6). Pub. L. 106-159 substituted “\$5000” for “\$1000” in two places.

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”.

§ 14710. Enforcement of Federal laws and regulations with respect to transportation of household goods

(a) **ENFORCEMENT BY STATES.**—Notwithstanding any other provision of this title, a State authority may enforce the consumer protection provisions of this title that apply to individual shippers, as determined by the Secretary, and are related to the delivery and transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall be paid, notwithstanding any other provision of law, to and retained by the State.

(b) **NOTICE.**—The State shall serve written notice to the Secretary or the Board, as the case