

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.

EFFECTIVE DATE

Section 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 1301 of this title.

§ 11708. Voluntary arbitration of certain rail rates and practices disputes

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of the Surface Transportation Board Reauthorization Act of 2015, the Board shall promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints subject to the jurisdiction of the Board.

(b) COVERED DISPUTES.—The voluntary and binding arbitration process established pursuant to subsection (a)—

(1) shall apply to disputes involving—

(A) rates, demurrage, accessorial charges, misrouting, or mishandling of rail cars; or

(B) a carrier's published rules and practices as applied to particular rail transportation;

(2) shall not apply to disputes—

(A) to obtain the grant, denial, stay, or revocation of any license, authorization, or exemption;

(B) to prescribe for the future any conduct, rules, or results of general, industry-wide applicability;

(C) to enforce a labor protective condition; or

(D) that are solely between 2 or more rail carriers; and

(3) shall not prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes the parties may have.

(c) ARBITRATION PROCEDURES.—

(1) IN GENERAL.—The Board—

(A) may make the voluntary and binding arbitration process established pursuant to subsection (a) available only to the relevant parties;

(B) may make the voluntary and binding arbitration process available only—

(i) after receiving the written consent to arbitrate from all relevant parties; and

(ii)(I) after the filing of a written complaint; or

(II) through other procedures adopted by the Board in a rulemaking proceeding;

(C) with respect to rate disputes, may make the voluntary and binding arbitration process available only to the relevant parties if the rail carrier has market dominance (as determined under section 10707); and

(D) may initiate the voluntary and binding arbitration process not later than 40 days after the date on which a written complaint is filed or through other procedures adopted by the Board in a rulemaking proceeding.

(2) LIMITATION.—Initiation of the voluntary and binding arbitration process shall preclude the Board from separately reviewing a complaint or dispute related to the same rail rate or practice in a covered dispute involving the same parties.

(3) RATES.—In resolving a covered dispute involving the reasonableness of a rail carrier's rates, the arbitrator or panel of arbitrators, as applicable, shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues (as determined under section 10704(a)(2)).

(d) ARBITRATION DECISIONS.—Any decision reached in an arbitration process under this section—

(1) shall be consistent with sound principles of rail regulation economics;

(2) shall be in writing;

(3) shall contain findings of fact and conclusions;

(4) shall be binding upon the parties; and

(5) shall not have any precedential effect in any other or subsequent arbitration dispute.

(e) TIMELINES.—

(1) SELECTION.—An arbitrator or panel of arbitrators shall be selected not later than 14 days after the date of the Board's decision to initiate arbitration.

(2) EVIDENTIARY PROCESS.—The evidentiary process of the voluntary and binding arbitration process shall be completed not later than 90 days after the date on which the arbitration process is initiated unless—

(A) a party requests an extension; and

(B) the arbitrator or panel of arbitrators, as applicable, grants such extension request.

(3) DECISION.—The arbitrator or panel of arbitrators, as applicable, shall issue a decision not later than 30 days after the date on which the evidentiary record is closed.

(4) EXTENSIONS.—The Board may extend any of the timelines under this subsection upon the agreement of all parties in the dispute.

(f) ARBITRATORS.—

(1) IN GENERAL.—Unless otherwise agreed by all of the parties, an arbitration under this section shall be conducted by an arbitrator or panel of arbitrators, which shall be selected from a roster, maintained by the Board, of persons with rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector.

(2) INDEPENDENCE.—In an arbitration under this section, the arbitrators shall perform their duties with diligence, good faith, and in a manner consistent with the requirements of impartiality and independence.

(3) SELECTION.—

(A) IN GENERAL.—If the parties cannot mutually agree on an arbitrator, or the lead ar-

bitrator of a panel of arbitrators, the parties shall select the arbitrator or lead arbitrator from the roster by alternately striking names from the roster until only 1 name remains meeting the criteria set forth in paragraph (1).

(B) **PANEL OF ARBITRATORS.**—If the parties agree to select a panel of arbitrators, instead of a single arbitrator, the panel shall be selected under this subsection as follows:

(i) The parties to a dispute may mutually select 1 arbitrator from the roster to serve as the lead arbitrator of the panel of arbitrators.

(ii) If the parties cannot mutually agree on a lead arbitrator, the parties shall select a lead arbitrator using the process described in subparagraph (A).

(iii) In addition to the lead arbitrator selected under this subparagraph, each party to a dispute shall select 1 additional arbitrator from the roster, regardless of whether the other party struck out the arbitrator's name under subparagraph (A).

(4) **COST.**—The parties shall share the costs incurred by the Board and arbitrators equally, with each party responsible for paying its own legal and other associated arbitration costs.

(g) **RELIEF.**—

(1) **IN GENERAL.**—Subject to the limitations set forth in paragraphs (2) and (3), an arbitral decision under this section may award the payment of damages or rate prescriptive relief.

(2) **PRACTICE DISPUTES.**—The damage award for practice disputes may not exceed \$2,000,000.

(3) **RATE DISPUTES.**—

(A) **MONETARY LIMIT.**—The damage award for rate disputes, including any rate prescription, may not exceed \$25,000,000.

(B) **TIME LIMIT.**—Any rate prescription shall be limited to not longer than 5 years from the date of the arbitral decision.

(h) **BOARD REVIEW.**—If a party appeals a decision under this section to the Board, the Board may review the decision under this section to determine if—

(1) the decision is consistent with sound principles of rail regulation economics;

(2) a clear abuse of arbitral authority or discretion occurred;

(3) the decision directly contravenes statutory authority; or

(4) the award limitation under subsection (g) was violated.

(Added Pub. L. 114–110, §13(a), Dec. 18, 2015, 129 Stat. 2235.)

REFERENCES IN TEXT

The date of the enactment of the Surface Transportation Board Reauthorization Act of 2015, referred to in subsec. (a), is the date of enactment of Pub. L. 114–110, which was approved Dec. 18, 2015.

CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

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11901.	General civil penalties.
11902.	Interference with railroad car supply.
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Sec.

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§ 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 dis-