

Public Law 103-180
103d Congress

An Act

Dec. 3, 1993
[S. 412]

To amend title 49, United States Code, relating to procedures for resolving claims involving unfiled, negotiated transportation rates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Negotiated Rates Act of 1993".

SEC. 2. PROCEDURES FOR RESOLVING CLAIMS INVOLVING UNFILED, NEGOTIATED TRANSPORTATION RATES.

(a) IN GENERAL.—Section 10701 of title 49, United States Code, is amended by adding at the end the following:

"(f) PROCEDURES FOR RESOLVING CLAIMS INVOLVING UNFILED, NEGOTIATED TRANSPORTATION 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 the jurisdiction of the Commission under subchapter II of chapter 105 of this title, 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 paragraph (2), (3), or (4) of this subsection, 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 subsection; 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 with the Commission 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 Commission 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

Negotiated
Rates Act of
1993.
49 USC 10101
note.

“(v) the carrier or freight forwarder demands additional payment of a higher rate filed in a tariff.

If there is a dispute as to the showing under subparagraph (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 subparagraph (B), such dispute shall be resolved by the Commission. Pending the resolution of any such dispute, the person shall not have to pay any additional compensation to the carrier or freight forwarder. Satisfaction of the claim under paragraph (2), (3), or (4) of this subsection shall be binding on the parties, and the parties shall not be subject to chapter 119 of this title.

“(2) 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 Commission.

“(3) 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 Commission.

“(4) CLAIMS INVOLVING PUBLIC WAREHOUSEMEN.—Notwithstanding paragraphs (2) and (3), 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 Commission.

“(5) 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 paragraph (2), (3), or (4), the person may pursue all rights and remedies existing under this title.

“(6) 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 described in paragraph (1) 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 Commission 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.

“(7) LIMITATION ON STATUTORY CONSTRUCTION.—Except as authorized in paragraphs (2), (3), (4), and (9) of this subsection,

nothing in this subsection shall relieve a motor common carrier of the duty to file and adhere to its rates, rules, and classifications as required in sections 10761 and 10762 of this title.

"(8) NOTIFICATION OF ELECTION.—

"(A) GENERAL RULE.—A person must notify the carrier or freight forwarder as to its election to proceed under paragraph (2), (3), or (4). Except as provided in subparagraphs (B), (C), and (D), such election may be made at any time.

"(B) DEMANDS FOR PAYMENT INITIALLY MADE AFTER DATE OF ENACTMENT.—If the carrier or freight forwarder or party representing such carrier or freight forwarder initially demands the payment of additional freight charges after the date of the enactment of this subsection and notifies the person from whom additional freight charges are sought of the provisions of paragraphs (1) through (7) at the time of the making of such initial demand, the election must be made not later than the later of—

"(i) 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

"(ii) the 90th day following the date of the enactment of this subsection.

"(C) PENDING SUITS FOR COLLECTION MADE BEFORE OR ON DATE OF ENACTMENT.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has filed, before or on the date of the enactment of this subsection, a suit for the collection of additional freight charges and notifies the person from whom additional freight charges are sought of the provisions of paragraphs (1) through (7), the election must be made not later than the 90th day following the date on which such notification is received.

"(D) DEMANDS FOR PAYMENT MADE BEFORE OR ON DATE OF ENACTMENT.—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 or on the date of the enactment of this subsection and notifies the person from whom additional freight charges are sought of the provisions of paragraphs (1) through (7), the election must be made not later than the later of—

"(i) 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

"(ii) the 90th day following the date of the enactment of this subsection.

"(9) CLAIMS INVOLVING SMALL-BUSINESS CONCERNS, CHARITABLE ORGANIZATIONS, AND RECYCLABLE MATERIALS.—Notwithstanding paragraphs (2), (3), and (4), 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, as defined in section 10733.”

(b) CONFORMING AMENDMENT.—Subsection (e) of such section is amended by striking “In” and inserting “Except as provided in subsection (f), in”. 49 USC 10701.

(c) APPLICABILITY.—The amendments made by subsections (a) and (b) of this section shall apply to all claims pending as of the date of the enactment of this Act and to all claims arising from transportation shipments tendered on or before the last day of the 24-month period beginning on such date of enactment. 49 USC 10701 note.

(d) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Interstate Commerce Commission shall transmit to Congress a report regarding whether there exists a justification for extending the applicability of amendments made by subsections (a) and (b) of this section beyond the period specified in subsection (c). 49 USC 10701 note.

(e) ALTERNATIVE PROCEDURE FOR RESOLVING DISPUTES.— 49 USC 10701 note.

(1) GENERAL RULE.—For purposes of section 10701 of title 49, United States Code, it shall be an unreasonable practice for a motor carrier of property (other than a household goods carrier) providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of such title, 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 provided before September 30, 1990, the difference between the applicable rate that is lawfully in effect pursuant to a tariff that is filed in accordance with chapter 107 of such title by the carrier or freight forwarder applicable to such transportation service and the negotiated rate for such transportation service if the carrier or freight forwarder is no longer transporting property between places described in section 10521(a)(1) of such title or is transporting property between places described in section 10521(a)(1) of such title for the purpose of avoiding the application of this subsection.

(2) JURISDICTION OF COMMISSION.—The Commission 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 paragraph (1). If the Commission determines that attempting to charge or the charging of the rate is an unreasonable practice under paragraph (1), the carrier, freight forwarder, or party may not collect the difference described in paragraph (1) between the applicable rate and the negotiated rate for the transportation service. In making such determination, the Commission 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 Commission 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 Commission 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.

(3) **STAY OF ADDITIONAL COMPENSATION.**—When a person proceeds under this subsection to challenge the reasonableness of the practice of a motor carrier, freight forwarder, or party described in paragraph (1) to attempt to charge or to charge the difference described in paragraph (1) 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 Commission 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.

(4) **TREATMENT.**—Paragraph (1) of this subsection is enacted as an exception, and shall be treated as an exception, to the requirements of sections 10761(a) and 10762 of title 49, United States Code, relating to a filed tariff rate for a transportation or service subject to the jurisdiction of the Commission and other general tariff requirements.

(5) **NONAPPLICABILITY OF NEGOTIATED RATE DISPUTE RESOLUTION PROCEDURE.**—If a person elects to seek enforcement of paragraph (1) with respect to a rate for a transportation or service, section 10701(f) of title 49, United States Code, as added by subsection (a) of this section, shall not apply to such rate.

(6) **DEFINITIONS.**—For purposes of this subsection, the following definitions apply:

(A) **COMMISSION, HOUSEHOLD GOODS, HOUSEHOLD GOODS FREIGHT FORWARDER, AND MOTOR CARRIER.**—The terms “Commission”, “household goods”, “household goods freight forwarder”, and “motor carrier” have the meaning such terms have under section 10102 of title 49, United States Code.

(B) **NEGOTIATED RATE.**—The term “negotiated rate” means a rate, charge, classification, or rule agreed upon by a motor carrier or freight forwarder described in paragraph (1) and a shipper through negotiations pursuant to which no tariff was lawfully and timely filed with the Commission and for which there is written evidence of such agreement.

(f) **PRIOR SETTLEMENTS AND ADJUDICATIONS.**—Any claim that, but for this subsection, would be subject to any provision of this Act (including any amendment made by this Act) and that was settled by mutual agreement of the parties to such claim, or resolved by a final adjudication of a Federal or State court, before the date of the enactment of this Act shall be treated as binding,

enforceable, and not contrary to law, unless such settlement was agreed to as a result of fraud or coercion.

(g) **RATE REASONABLENESS.**—Section 10701(e) of title 49, United States Code, is amended by adding at the end the following: “Any complaint brought against a motor carrier (other than a carrier described in subsection (f)(1)(A)) by a person (other than a motor carrier) for unreasonably high rates for past or future transportation shall be determined under this subsection.”.

SEC. 3. STATUTE OF LIMITATIONS.

(a) **MOTOR CARRIER CHARGES.**—Section 11706(a) of title 49, United States Code, is amended by striking the period at the end and inserting the following: “; except that a motor carrier (other than a motor carrier providing transportation of household goods) or freight forwarder (other than a household goods freight forwarder)—

“(1) must begin such a civil action within 2 years after the claim accrues if the transportation or service is provided by the carrier in the 1-year period beginning on the date of the enactment of the Negotiated Rates Act of 1993; and

“(2) must begin such a civil action within 18 months after the claim accrues if the transportation or service is provided by the carrier after the last day of such 1-year period.”.

(b) **MOTOR CARRIER OVERCHARGES.**—Section 11706(b) of title 49, United States Code, is amended by striking “. If that claim is against a common carrier” and inserting the following: “; except that a person must begin a civil action to recover overcharges from a motor carrier subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title for transportation or service—

“(1) within 2 years after the claim accrues if such transportation or service is provided in the 1-year period beginning on the date of the enactment of the Negotiated Rate Act of 1993; and

“(2) within 18 months after the claim accrues if such transportation or service is provided after the last day of such 1-year period.

If the claim is against a common carrier”.

(c) **CONFORMING AMENDMENT.**—Section 11706(d) of title 49, United States Code, is amended—

(1) by striking “3-year period” each place it appears and inserting “limitation periods”;

(2) by striking “is extended” the first place it appears and inserting “are extended”; and

(3) by striking “each”.

SEC. 4. TARIFF RECONCILIATION RULES FOR MOTOR CARRIERS OF PROPERTY.

(a) **IN GENERAL.**—Chapter 117 of title 49, United States Code, is amended by adding at the end the following:

“§ 11712. Tariff reconciliation rules for motor common carriers of property

“(a) **MUTUAL CONSENT.**—Subject to Commission review and approval, motor carriers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title (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 sections 10761 and 10762 of this title. Resolution of such claims among the parties shall not subject any party to the penalties of chapter 119 of this title.

“(b) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall relieve the motor carrier of the duty to file and adhere to its rates, rules, and classifications as required in sections 10761 and 10762, except as provided in subsection (a) of this section.

“(c) RULEMAKING PROCEEDING.—Not later than 90 days after the date of the enactment of this section, the Commission shall institute a proceeding to establish rules pursuant to which the tariff requirements of sections 10761 and 10762 of this title shall not apply under circumstances described in subsection (a) of this section.”

(b) CONFORMING AMENDMENT.—The analysis for chapter 117 of title 49, United States Code, is amended by adding at the end the following:

“11712. Tariff reconciliation rules for motor common carriers of property.”

SEC. 5. CUSTOMER ACCOUNT CODES AND RANGE TARIFFS.

(a) CUSTOMER ACCOUNT CODES.—Section 10762 of title 49, United States Code, is amended by adding at the end the following:

“(h) CUSTOMER ACCOUNT CODES.—No tariff filed by a motor carrier of property with the Commission before, on, or after the date of the enactment of this subsection may be held invalid solely on the basis that a numerical or alpha account code is used in such tariff to designate customers or to describe the applicability of rates. For transportation performed on and after the 180th day following such date of enactment, the name of the customer for each account code must be set forth in the tariff (other than the tariff of a motor carrier providing transportation of household goods).”

(b) RANGE TARIFFS.—Such section is further amended by adding at the end the following:

“(i) RANGE TARIFFS.—No tariff filed by a motor carrier of property with the Commission before, on, or after the date of the enactment of this subsection may be held invalid solely on the basis that the tariff does not show a specific rate or discount for a specific shipment if the tariff is based on a range of rates or discounts for specific classes of shipments. For transportation performed on or after the 180th day following such date of enactment, such a range tariff must identify the specific rate or discount from among the range of rates or discounts contained in such range tariff which is applicable to each specific shipment or must contain an objective means for determining the rate.”

SEC. 6. CONTRACTS OF MOTOR CONTRACT CARRIERS.

(a) IN GENERAL.—Section 10702 of title 49, United States Code, is amended by adding at the end the following new subsection:

“(c) CONTRACTS OF CARRIAGE FOR MOTOR CONTRACT CARRIERS.—

“(1) GENERAL RULE.—A motor contract carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall enter into a written agreement, separate from the bill of lading

or receipt, for each contract for the provision of transportation subject to such jurisdiction which is entered into after the 90th day following the date of the enactment of this subsection.

“(2) MINIMUM CONTENT REQUIREMENTS.—The written agreement shall, at a minimum—

“(A) identify the parties thereto;

“(B) commit the shipper to tender and the carrier to transport a series of shipments;

“(C) contain the contract rate or rates for the transportation service to be or being provided; and

“(D)(i) state that it provides for the assignment of motor vehicles for a continuing period of time for the exclusive use of the shipper; or

“(ii) state that it provides that the service is designed to meet the distinct needs of the shipper.

“(3) RETENTION BY CARRIER.—All written agreements entered into by a motor contract carrier under paragraph (1) shall be retained by the carrier while in effect and for a minimum period of 3 years thereafter and shall be made available to the Commission upon request.

“(4) RANDOM AUDITS BY COMMISSION.—The Commission shall conduct periodic random audits to ensure that motor contract carriers are complying with this subsection and are adhering to the rates set forth in their agreements.”.

(b) CIVIL PENALTY.—Section 11901(g) of such title is amended—

49 USC 11901.

(1) by inserting “or enter into or retain a written agreement under section 10702(c) of this title” after “under this subtitle” the first place it appears; and

(2) by striking “or (5)” and inserting “(5) does not comply with section 10702(c) of this title, or (6)”.

(c) CRIMINAL PENALTY.—Section 11909(b) of such title is amended—

(1) by inserting “or enter into or retain a written agreement under section 10702(c) of this title” after “under this subtitle” the first place it appears; and

(2) in clause (1) by inserting after “make that report” the following: “or willfully does not enter into or retain that agreement”.

SEC. 7. BILLING AND COLLECTING PRACTICES.

(a) IN GENERAL.—Subchapter IV of chapter 107 of title 49, United States Code, is amended by adding at the end the following:

“§ 10767. Billing and collecting practices

“(a) REGULATIONS LIMITING REDUCED RATES.—Not later than 120 days after the date of the enactment of this section, the Commission shall issue regulations that prohibit a motor carrier subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title from providing a reduction in a rate set forth in its tariff or contract for the provision of transportation of property to any person other than (1) the person paying the motor carrier directly for the transportation service according to the bill of lading, receipt, or contract, or (2) an agent of the person paying for the transportation.

“(b) DISCLOSURE OF ACTUAL RATES, CHARGES, AND ALLOWANCES.—The regulations of the Commission issued pursuant to this section shall require a motor carrier to disclose, when a docu-

ment is presented or transmitted electronically 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 the transportation service and shall prohibit any person from causing 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. Where 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 for the payment that a reduction, allowance, or other adjustment may apply.

“(c) PAYMENTS OR ALLOWANCES FOR CERTAIN SERVICES.—The regulations issued by the Commission pursuant to this section shall not prohibit a motor carrier from making payments or allowances to a party to the transaction for services that would otherwise be performed by the motor carrier, such as a loading or unloading service, if the payments or allowances are reasonably related to the cost that such party knows or has reason to know would otherwise be incurred by the motor carrier.”

(b) CONFORMING AMENDMENT.—The analysis for such subchapter is amended by adding at the end the following new item:

“10767. Billing and collecting practices.”

(c) VIOLATION.—

49 USC 11901.

(1) IN GENERAL.—Section 11901 of such title is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following:

“(l) RATE DISCOUNTS.—A person, or an officer, employee, or agent of that person, that knowingly pays, accepts, or solicits a reduced rate or rates in violation of the regulations issued under section 10767 of this title is liable to the United States for a civil penalty of not less than \$5,000 and not more than \$10,000 plus 3 times the amount of damages which a party incurs because of such violation. Notwithstanding any other provision of this title, the express civil penalties and damages provided for in this subsection are the exclusive legal sanctions to be imposed under this title for practices found to be in violation of the regulations issued under section 10767 and such violations do not render tariff or contract provisions void or unenforceable.”

(2) VENUE.—Section 11901(m)(2) of such title (as redesignated by paragraph (1)) is amended by striking “or (k)” and inserting “(k), or (l)”.

SEC. 8. RESOLUTION OF DISPUTES RELATING TO CONTRACT OR COMMON CARRIER CAPACITIES.

Section 11101 of title 49, United States Code, is amended by adding at the end the following:

“(d) RESOLUTION OF DISPUTES RELATING TO CONTRACT OR COMMON CARRIER CAPACITIES.—If a motor carrier (other than a motor carrier providing transportation of household goods) subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title has authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation is provided in its common carrier or contract carrier capacity and the parties are not

able to resolve the dispute consensually, the Commission shall have jurisdiction to, and shall, resolve the dispute.”.

SEC. 9. LIMITATION ON STATUTORY CONSTRUCTION.

49 USC 10701
note.

Nothing in this Act (including any amendment made by this Act) shall be construed as limiting or otherwise affecting application of title 11, United States Code, relating to bankruptcy; title 28, United States Code, relating to the jurisdiction of the courts of the United States (including bankruptcy courts); or the Employee Retirement Income Security Act of 1974.

Approved December 3, 1993.

LEGISLATIVE HISTORY—S. 412 (H.R. 2121):

HOUSE REPORTS: No. 103-359 accompanying H.R. 2121 (Comm. on Public Works and Transportation).

SENATE REPORTS: No. 103-79 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 139 (1993):

July 1, considered and passed Senate.

Nov. 15, H.R. 2121 considered and passed House; S. 412, amended, passed in lieu.

Nov. 18, Senate concurred in House amendments.