

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40703 .....	46 App.:1708(c) (1st sentence).	Pub. L. 98-237, §9(c) (1st sentence), Mar. 20, 1984, 98 Stat. 76; Pub. L. 102-100, §5(b), Aug. 17, 1991, 105 Stat. 492; Pub. L. 105-258, title I, §108(8), Oct. 14, 1998, 112 Stat. 1908.

§ 40704. Commission review

(a) REQUEST FOR JUSTIFICATION.—On request of the Federal Maritime Commission, a controlled carrier shall file with the Commission, within 20 days of the request, a statement of justification that sufficiently details the carrier’s need and purpose for an existing or proposed rate, charge, classification, rule, or regulation and upon which the Commission may reasonably base a determination of its lawfulness.

(b) DETERMINATION.—Within 120 days after receipt of information requested under subsection (a), the Commission shall determine whether the rate, charge, classification, rule, or regulation may be unjust and unreasonable.

(c) SHOW CAUSE ORDER.—Whenever the Commission is of the opinion that a rate, charge, classification, rule, or regulation published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why the rate, charge, classification, rule, or regulation should not be prohibited.

(d) SUSPENSION PENDING DETERMINATION.—

(1) NOT YET EFFECTIVE.—Pending a determination of the lawfulness of a rate, charge, classification, rule, or regulation in a proceeding under subsection (c), the Commission may suspend the rate, charge, classification, rule, or regulation at any time before its effective date.

(2) ALREADY EFFECTIVE.—If a rate, charge, classification, rule, or regulation has already become effective, the Commission, on issuance of an order to show cause, may suspend the rate, charge, classification, rule, or regulation on at least 30 days’ notice to the controlled carrier.

(3) MAXIMUM SUSPENSION.—A period of suspension under this subsection may not exceed 180 days.

(e) REPLACEMENT DURING SUSPENSION.—Whenever the Commission has suspended a rate, charge, classification, rule, or regulation under this section, the controlled carrier may publish a new rate, charge, classification, rule, or regulation to take effect immediately during the suspension in lieu of the suspended rate, charge, classification, rule, or regulation. However, the Commission may reject the new rate, charge, classification, rule, or regulation if the Commission believes it is unjust and unreasonable.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1536.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40704 .....	46 App.:1708(c) (last sentence), (d).	Pub. L. 98-237, §9(c) (last sentence), (d), Mar. 20, 1984, 98 Stat. 76; Pub. L. 105-258, title I, §108(9)-(15), Oct. 14, 1998, 112 Stat. 1908.

In subsection (d)(1), the words “in a proceeding under subsection (c)” are substituted for “in such a proceeding” for clarity.

§ 40705. Presidential review of Commission orders

(a) TRANSMISSION TO PRESIDENT.—The Federal Maritime Commission shall transmit to the President, concurrently with publication thereof, each order of suspension or final order of prohibition issued under section 40704 of this title.

(b) PRESIDENTIAL REQUEST AND COMMISSION ACTION.—Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a), the President, in writing, may request the Commission to stay the effect of the order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission shall immediately grant the request by issuing an order in which the President’s request shall be described. During a stay, the President shall, whenever practicable, attempt to resolve the matter by negotiating with representatives of the applicable foreign governments.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1537.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40705 .....	46 App.:1708(e).	Pub. L. 98-237, §9(e), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §108(16), Oct. 14, 1998, 112 Stat. 1909.

In subsection (b), the words “Notwithstanding any other law” are omitted as unnecessary.

§ 40706. Exceptions

This chapter does not apply to—

(1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(2) a trade served only by controlled carriers.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1537.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40706 .....	46 App.:1708(f).	Pub. L. 98-237, §9(f), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §108(17)-(19), Oct. 14, 1998, 112 Stat. 1909.

In paragraph (1), the words “foreign country” are substituted for “state” for clarity and consistency.

CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES

- Sec. 40901. License requirement.
- 40902. Financial responsibility.
- 40903. Suspension or revocation of license.
- 40904. Compensation by common carriers.

§ 40901. License requirement

(a) IN GENERAL.—A person in the United States may not act as an ocean transportation

intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) EXCEPTION.—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows include 40901(a) and 40901(b) with their respective legal references.

§ 40902. Financial responsibility

(a) IN GENERAL.—A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety—

- (1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and
(2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or other surety obtained under this section—

- (1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title;
(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

- (3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) REGULATIONS ON COURT JUDGMENTS.—The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the dam-

ages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(d) RESIDENT AGENT.—An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row includes 40902 with its legal references.

In subsection (b), in paragraphs (2) and (3), the words "described in section 1702(17) of this Appendix" are omitted as unnecessary.

§ 40903. Suspension or revocation of license

(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary—

- (1) is not qualified to provide intermediary services; or
(2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER SURETY.—The Commission may revoke an ocean transportation intermediary's license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row includes 40903 with its legal references.

In subsection (a)(2), the words "lawful" and "rule" are omitted as unnecessary.

§ 40904. Compensation by common carriers

(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title) and has—

- (1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of the space; and
(2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) DUAL COMPENSATION.—A common carrier may not pay compensation for services de-