

**§ 40306. Nondisclosure of information**

Information and documents (other than an agreement) filed with the Federal Maritime Commission under this chapter are exempt from disclosure under section 552 of title 5 and may not be made public except as may be relevant to an administrative or judicial proceeding. This section does not prevent disclosure to either House of Congress or to a duly authorized committee or subcommittee of Congress.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1531.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                   |
|------------------------|---------------------------|---|
| 40306 .....            | 46 App.:1705(j).          | Pub. L. 98-237, § 6(j), Mar. 20, 1984, 98 Stat. 73. |

The words “judicial proceeding” are substituted for “judicial action or proceeding” to eliminate unnecessary words.

**§ 40307. Exemption from antitrust laws**

(a) IN GENERAL.—The antitrust laws do not apply to—

(1) an agreement (including an assessment agreement) that has been filed and is effective under this chapter;

(2) an agreement that is exempt under section 40103 of this title from any requirement of this part;

(3) an agreement or activity within the scope of this part, whether permitted under or prohibited by this part, undertaken or entered into with a reasonable basis to conclude that it is—

(A) pursuant to an agreement on file with the Federal Maritime Commission and in effect when the activity takes place; or

(B) exempt under section 40103 of this title from any filing or publication requirement of this part;

(4) an agreement or activity relating to transportation services within or between foreign countries, whether or not via the United States, unless the agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(5) an agreement or activity relating to the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(6) an agreement or activity to provide wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(7) an agreement, modification, or cancellation approved before June 18, 1984, by the Commission under section 15 of the Shipping Act, 1916, or permitted under section 14b of that Act, and any properly published tariff, rate, fare, or charge, or classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) EXCEPTIONS.—This part does not extend antitrust immunity to—

(1) an agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this part relating to transportation within the United States;

(2) a discussion or agreement among common carriers subject to this part relating to the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) an agreement among common carriers subject to this part to establish, operate, or maintain a marine terminal in the United States; or

(4) a loyalty contract.

(c) RETROACTIVE EFFECT OF DETERMINATIONS.—A determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws under subsection (a) does not remove or alter the antitrust immunity for the period before the determination.

(d) RELIEF UNDER CLAYTON ACT.—A person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by this part.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1531.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>  |
|------------------------|---------------------------|--|
| 40307 .....            | 46 App.:1706.             | Pub. L. 98-237, § 7, Mar. 20, 1984, 98 Stat. 73; Pub. L. 105-258, title I, § 105, Oct. 14, 1998, 112 Stat. 1905. |

Subsection (a)(1) is substituted for “any agreement that has been filed under section 1704 of this Appendix and is effective under section 1704(d) [redesignated as (e)] or section 1705 of this Appendix” for clarity and to eliminate unnecessary words.

Subsection (a)(2) is substituted for “any agreement that . . . is exempt under section 1715 of this Appendix from any requirement of this chapter” in 46 App. U.S.C. 1706(a)(1) for clarity.

In subsection (a)(7), the words “subject to section 1719(e)(2) of this Appendix” are omitted as obsolete.

REFERENCES IN TEXT

Section 15 of the Shipping Act, 1916, referred to in subsec. (a)(7), which was classified to section 814 of the former Appendix to this title, was repealed by Pub. L. 104-88, title III, § 335(b)(3), Dec. 29, 1996, 109 Stat. 954.

Section 14b of the Shipping Act, 1916, referred to in subsec. (a)(7), which was classified to section 813a of former Title 46, Shipping, was repealed by Pub. L. 98-237, § 20(a), Mar. 20, 1984, 98 Stat. 88.

**CHAPTER 405—TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS**

|             |                                       |
|-------------|---------------------------------------|
| Sec. 40501. | General rate and tariff requirements. |
| 40502.      | Service contracts.                    |
| 40503.      | Refunds and waivers.                  |

**§ 40501. General rate and tariff requirements**

(a) AUTOMATED TARIFF SYSTEM.—

(1) IN GENERAL.—Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, a common carrier is not required to state separately or otherwise reveal in tariffs the inland divisions of a through rate.

(2) EXCEPTIONS.—Paragraph (1) does not apply with respect to bulk cargo, forest prod-

ucts, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(b) CONTENTS OF TARIFFS.—A tariff under subsection (a) shall—

(1) state the places between which cargo will be carried;

(2) list each classification of cargo in use;

(3) state the level of compensation, if any, of any ocean freight forwarder by a carrier or conference;

(4) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules that in any way change, affect, or determine any part or the total of the rates or charges;

(5) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

(6) include copies of any loyalty contract, omitting the shipper's name.

(c) ELECTRONIC ACCESS.—A tariff under subsection (a) shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations. A reasonable fee may be charged for such access, except that no fee may be charged for access by a Federal agency.

(d) TIME-VOLUME RATES.—A rate contained in a tariff under subsection (a) may vary with the volume of cargo offered over a specified period of time.

(e) EFFECTIVE DATES.—

(1) INCREASES.—A new or initial rate or change in an existing rate that results in an increased cost to a shipper may not become effective earlier than 30 days after publication. However, for good cause, the Federal Maritime Commission may allow the rate to become effective sooner.

(2) DECREASES.—A change in an existing rate that results in a decreased cost to a shipper may become effective on publication.

(f) MARINE TERMINAL OPERATOR SCHEDULES.—A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

(g) REGULATIONS.—

(1) IN GENERAL.—The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission, after periodic review, may prohibit the use of any automated tariff system that fails to meet the requirements established under this section.

(2) REMOTE TERMINALS.—The Commission may not require a common carrier to provide a remote terminal for electronic access under subsection (c).

(3) MARINE TERMINAL OPERATOR SCHEDULES.—The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1532.)

#### HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i>               | <i>Source (Statutes at Large)</i>   |
|------------------------|---|---|
| 40501(a) .....         | 46 App.:1707(a)(1) (1st, 2d sentences). | Pub. L. 98-237, §8(a), (b), (d), (f), (g), Mar. 20, 1984, 98 Stat. 74; Pub. L. 105-258, title I, §106(a), (c), (e), (f), Oct. 14, 1998, 112 Stat. 1905, 1907. |
| 40501(b) .....         | 46 App.:1707(a)(1) (last sentence).     |   |
| 40501(c) .....         | 46 App.:1707(a)(2).                     |   |
| 40501(d) .....         | 46 App.:1707(b).                        |   |
| 40501(e) .....         | 46 App.:1707(d).                        |   |
| 40501(f) .....         | 46 App.:1707(f).                        |   |
| 40501(g) .....         | 46 App.:1707(g).                        |   |

In subsection (b)(3), the words “ocean freight forwarder” are substituted for “ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix” because the definition of “ocean transportation intermediary” in section 1702(17)(A) contains a definition of “ocean freight forwarder” which is restated as a separate definition.

In subsection (e), the word “calendar” is omitted as unnecessary.

In subsection (f)(1), the words “subject to section 1709(d) of this Appendix” are omitted as unnecessary.

#### § 40502. Service contracts

(a) IN GENERAL.—An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this part.

(b) FILING REQUIREMENTS.—

(1) IN GENERAL.—Each service contract entered into under this section by an individual ocean common carrier or an agreement shall be filed confidentially with the Federal Maritime Commission.

(2) EXCEPTIONS.—Paragraph (1) does not apply to contracts regarding bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(c) ESSENTIAL TERMS.—Each service contract shall include—

(1) the origin and destination port ranges;

(2) the origin and destination geographic areas in the case of through intermodal movements;

(3) the commodities involved;

(4) the minimum volume or portion;

(5) the line-haul rate;

(6) the duration;

(7) service commitments; and

(8) the liquidated damages for nonperformance, if any.

(d) PUBLICATION OF CERTAIN TERMS.—When a service contract is filed confidentially with the Commission, a concise statement of the essential terms specified in paragraphs (1), (3), (4), and (6) of subsection (c) shall be published and made available to the general public in tariff format.

(e) DISCLOSURE OF CERTAIN TERMS.—

(1) DEFINITIONS.—In this subsection, the terms “dock area” and “within the port area” have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

(2) DISCLOSURE.—An ocean common carrier that is a party to or is otherwise subject to a