

(1) maintain a rate or charge in a tariff or service contract, or charge or assess a rate, that is below a just and reasonable level; or

(2) establish, maintain, or enforce in a tariff or service contract a classification, rule, or regulation that results, or is likely to result, in the carriage or handling of cargo at a rate or charge that is below a just and reasonable level.

(b) COMMISSION PROHIBITION.—The Federal Maritime Commission, at any time after notice and opportunity for a hearing, may prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable.

(c) BURDEN OF PROOF.—In a proceeding under this section, the burden of proof is on the controlled carrier to demonstrate that its rate, charge, classification, rule, or regulation is just and reasonable.

(d) VOIDNESS.—A rate, charge, classification, rule, or regulation that has been suspended or prohibited by the Commission is void and its use is unlawful.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1535.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40701	46 App.:1708(a).	Pub. L. 98-237, §9(a), Mar. 20, 1984, 98 Stat. 76; Pub. L. 102-100, §5(a), Aug. 17, 1991, 105 Stat. 492; Pub. L. 105-258, title I, §108(1)-(4), Oct. 14, 1998, 112 Stat. 1908.

§ 40702. Rate standards

(a) DEFINITION.—In this section, the term “constructive costs” means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(b) STANDARDS.—In determining whether a rate, charge, classification, rule, or regulation of a controlled carrier is just and reasonable, the Federal Maritime Commission—

(1) shall take into account whether the rate or charge that has been published or assessed, or that would result from the pertinent classification, rule, or regulation, is below a level that is fully compensatory to the controlled carrier based on the carrier’s actual costs or constructive costs; and

(2) may take into account other appropriate factors, including whether the rate, charge, classification, rule, or regulation is—

(A) the same as, or similar to, those published or assessed by other carriers in the same trade;

(B) required to ensure movement of particular cargo in the same trade; or

(C) required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(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>
40702	46 App.:1708(b).	Pub. L. 98-237, §9(b), Mar. 20, 1984, 98 Stat. 76; Pub. L. 105-258, title I, §108(5)-(7), Oct. 14, 1998, 112 Stat. 1908.

§ 40703. Effective date of rates

Notwithstanding section 40501(e) of this title and except for service contracts, a rate, charge, classification, rule, or regulation of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication.

(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>
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(6), 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,