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§ 40701. Rates

(a) IN GENERAL.—A controlled carrier may not—

- (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(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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 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 advertise, hold oneself out, or 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.

(c) APPLICABILITY.—Subsection (a) and section 40902 do not apply to a person that performs ocean transportation intermediary services on behalf of an ocean transportation intermediary for which it is a disclosed agent.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1538; Pub. L. 115–282, title VII, § 707(a), (b), Dec. 4, 2018, 132 Stat. 4295.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 40901(a): 46 App.:1718(a). Pub. L. 98–237, §19(a), (d), Mar. 20, 1984, 98 Stat. 87, 88; Pub. L. 105–258, title I, §116, Oct. 14, 1998, 112 Stat. 1912. Row 40901(b): 46 App.:1718(d).

Editorial Notes

AMENDMENTS

- 2018—Subsec. (a). Pub. L. 115–282, § 707(a), inserted “advertise, hold oneself out, or” after “may not”.
Subsec. (c). Pub. L. 115–282, § 707(b), added subsec. (c).

§ 40902. Financial responsibility

(a) IN GENERAL.—A person may not advertise, hold oneself out, or 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.