

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 collective bargaining agreement with a labor organization shall, in response to a written request by the labor organization, state whether it is responsible for the following work at a dock area or within a port area in the United States with respect to cargo transportation under a service contract:

(A) The movement of the shipper’s cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area.

(B) The assignment of intraport carriage of the shipper’s cargo between areas on a dock or within the port area.

(C) The assignment of the carriage of the shipper’s cargo between a container yard on a dock area or within the port area and a rail yard adjacent to the container yard.

(D) The assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(3) **WITHIN REASONABLE TIME.**—The common carrier shall provide the information described in paragraph (2) to the requesting labor organization within a reasonable period of time.

(4) **EXISTENCE OF COLLECTIVE BARGAINING AGREEMENT.**—This subsection does not require the disclosure of information by an ocean common carrier unless there exists an applicable and otherwise lawful collective bargaining agreement pertaining to that carrier. A disclosure by an ocean common carrier may not be deemed an admission or an agreement that any work is covered by a collective bargaining agreement. A dispute about whether any work is covered by a collective bargaining agreement and the responsibility of an ocean common carrier under a collective bargaining agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act (29 U.S.C. 151 et seq.), and without reference to this subsection.

(5) **EFFECT UNDER OTHER LAWS.**—This subsection does not affect the lawfulness or unlawfulness under this part or any other Federal or State law of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract.

(f) **REMEDY FOR BREACH.**—Unless the parties agree otherwise, the exclusive remedy for a breach of a service contract is an action in an appropriate court. The contract dispute resolution forum may not be controlled by or in any way affiliated with a controlled carrier or by the government that owns or controls the carrier.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1533.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40502(a) .....	46 App.:1707(c)(1) (1st sentence).	Pub. L. 98-237, §8(c), Mar. 20, 1984, 98 Stat. 75; re-stated Pub. L. 105-258, title I, §106(b), Oct. 14, 1998, 112 Stat. 1905.
40502(b) .....	46 App.:1707(c)(2) (1st sentence).	
40502(c) .....	46 App.:1707(c)(2) (last sentence).	
40502(d) .....	46 App.:1707(c)(3).	
40502(e) .....	46 App.:1707(c)(4).	
40502(f) .....	46 App.:1707(c)(1) (2d, last sentences).	

In subsection (e)(5), the words “the National Labor Relations Act [29 U.S.C. 151 et seq.], the Taft-Hartley Act [29 U.S.C. 141 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], the antitrust laws” are omitted as unnecessary because of the reference to “any other Federal or State law”.

**Editorial Notes**

REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (e)(4), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

**§ 40503. Refunds and waivers**

The Federal Maritime Commission, on application of a carrier or shipper, may permit a common carrier or conference to refund a portion of the freight charges collected from a shipper, or to waive collection of a portion of the charges from a shipper, if—

(1) there is an error in a tariff, a failure to publish a new tariff, or an error in quoting a tariff, and the refund or waiver will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference, before filing an application for authority to refund or waive any charges for an error in a tariff or a failure to publish a tariff, has published a new tariff setting forth the rate on which the refund or waiver would be based; and

(3) the application for the refund or waiver is filed with the Commission within 180 days from the date of shipment.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40503 .....	46 App.:1707(e).	Pub. L. 98-237, §8(e), Mar. 20, 1984, 98 Stat. 75; Pub. L. 105-258, title I, §106(d), Oct. 14, 1998, 112 Stat. 1907.

In paragraph (1), the words “an error in a tariff, a failure to publish a new tariff” are substituted for “an error in a, in failing to publish a new tariff” to correct an obvious error in the underlying statute.

In paragraph (2), the words “or waive” are added for consistency with the reference to a waiver later in the paragraph.

**CHAPTER 407—CONTROLLED CARRIERS**

Sec.  
40701. Rates.

Sec.	
40702.	Rate standards.
40703.	Effective date of rates.
40704.	Commission review.
40705.	Presidential review of Commission orders.
40706.	Exceptions.

§ 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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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.