

Public Law 95-483
95th Congress

An Act

To provide for the regulation of rates or charges by certain state-owned carriers in the foreign commerce of the United States, and for other purposes.

Oct. 18, 1978
[H.R. 9998]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ocean Shipping Act of 1978".

Ocean Shipping
Act of 1978.
46 USC 842 note.

SEC. 2. The first section of the Shipping Act, 1916, as amended (46 U.S.C. 801), is further amended by inserting the following definition of the term "controlled carrier" immediately following the definition of the term "common carrier by water":

"The term 'controlled carrier' means a common carrier by water operating, offering, or proposing to offer service in the foreign commerce of the United States which carrier is or whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the controlled carrier operate. Ownership or control by such government shall be deemed to exist if a majority portion of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government, or by any person, corporation, or entity controlled by such government. Ownership or control shall also be deemed to exist if the government has the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of the carrier."

"Controlled
carrier."

SEC. 3. Section 18 of the Shipping Act, 1916, as amended (46 U.S.C. 817), is further amended by adding at the end thereof, the following new subsection:

"(c) (1) No controlled carrier subject to this Act shall maintain rates or charges in its tariffs filed with the Commission that are below a level which is just and reasonable, nor shall any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in such tariffs. An unjust or unreasonable classification, rule, or regulation means one which results or is likely to result in the carriage or handling of cargo at rates or charges which are below a level which is just and reasonable. The Commission may at any time after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations which the controlled carrier has failed to demonstrate to be just and reasonable. In any proceeding under this subsection, the burden of proof shall be on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations filed by a controlled carrier which have been rejected, suspended, or disapproved by the Commission are void, and their use is unlawful.

Notice and
hearing.

"(2) For the purpose of this subsection, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission may take into account appropriate factors, including, but not limited to, whether: (i) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's

actual costs or upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade; (ii) the rates, charges, classifications, rules, or regulations are the same as or similar to those filed or assessed by other carriers in the same trade; (iii) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or (iv) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

“(3) Notwithstanding the provisions of subsection (b) (2) of this section, rates, charges, classifications, rules, or regulations of controlled carriers shall not, without special permission of the Commission, become effective within less than thirty days following the date of filing with the Commission. Following the effective date of this subsection, each controlled carrier shall, upon the request of the Commission, file within twenty days of request, with respect to its existing or proposed rates, charges, classifications, rules, or regulations a statement of justification which sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations, upon which the Commission may reasonably base its determination of the lawfulness thereof.

“(4) Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to the controlled carrier to show cause why such rates, charges, classifications, rules, or regulations should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend such rates, charges, classifications, rules, or regulations at any time prior to their effective date. In the case of any rates, charges, classifications, rules, or regulations which have already become effective, the Commission may, upon the issuance of an order to show cause, suspend such rates, charges, classifications, rules, or regulations on not less than sixty days notice to the controlled carrier. No period of suspension hereunder may be greater than one hundred and eighty days. Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this provision, the affected carrier may file new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations: *Provided, however,* That the Commission may reject such new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

“(5) Concurrently with the publication thereof, the Commission shall transmit to the President any order of suspension or final order of disapproval of rates, charges, classifications, rules, or regulations of a controlled carrier subject to the provisions of this subsection. Within ten days after the receipt or the effective date of such Commission order, whichever is later, the President may request the Commission in writing to stay the effect of the Commission's order if he finds that such stay is required for reasons of national defense or foreign policy which reasons shall be specified in the report. Notwithstanding any other provision of law, the Commission shall immediately grant such request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

“(6) The provisions of this subsection shall not apply to: (i) any controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; (ii) any controlled carrier of a state which, on the effective date of this subsection, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development; (iii) rates, charges, classifications, rules, or regulations of any controlled carrier in any particular trade which are covered by an agreement approved under section 15 of this Act, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection; (iv) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein, and the United States, or any of its districts, territories, or possessions; or (v) a trade served exclusively by controlled carriers.”

SEC. 4. The provisions of this Act, including the amendments made by this Act, shall become effective thirty days after its date of enactment.

Effective date.
46 USC 801 note.

Approved October 18, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1381 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 95-1260 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 124 (1978):

July 31, considered and passed House.

Oct. 3, considered and passed Senate.