

Public Law 95-475  
95th Congress

An Act

Oct. 18, 1978

[H.R. 6503]

To amend the Intercoastal Shipping Act, 1933, and for other purposes.

Intercoastal  
Shipping Act,  
1933,  
amendment.

"General  
increase  
in rates."

"General  
decrease  
in rates."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first section of the Intercoastal Shipping Act, 1933 (46 U.S.C. 843), is amended by inserting "(1)" immediately before "The term"; and by adding at the end thereof the following:

"(2) The term 'general increase in rates' means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenues of such carrier for the particular trade of not less than 3 per centum.

"(3) The term 'general decrease in rates' means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum."

SEC. 2. The second paragraph of section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844), is amended—

(1) by striking out "*Provided,*" and inserting in lieu thereof the following: "*Provided,* That no general increase in rates or general decrease in rates shall take effect before the close of the sixtieth day after the day on which such general increase in rates or general decrease in rates is posted and filed with the Commission: *Provided further,*"; and

(2) by inserting "or sixty days" immediately after "thirty days" in the second proviso thereto.

SEC. 3. Section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845), is amended—

(1) by inserting "(a)" immediately before "Whenever" at the beginning of the first paragraph thereof;

(2) by amending subsection (a) (as so designated by paragraph (1)) by—

(A) striking out "complaint" each place it appears therein and inserting in lieu thereof "protest";

(B) striking out the colon after "practice" and inserting in lieu thereof a period; and

(C) striking out the proviso and inserting in lieu thereof the following:

"The Commission shall not order a hearing pursuant to this subsection, on its own motion or upon protest, unless the Commission publishes in the Federal Register the reasons, in detail, why it considers such a hearing to be necessary and the specific issues to be resolved by such hearing. For purposes of facilitating the administration of this Act, the Commission shall, within one year after the effective date of this sentence, by regulation prescribe guidelines for the determination of what constitutes a just and reasonable rate of return or profit for common carriers by water in intercoastal commerce. After the regula-

Hearing.  
Publication in  
Federal Register.

Guidelines.

tions referred to in the preceding sentence are initially prescribed, the Commission shall from time to time thereafter review such regulations and make such amendments thereto as may be appropriate.”;

(3) by inserting “(b)” immediately before “Pending” at the beginning of the second paragraph thereof;

(4) by amending subsection (b) (as so designated by paragraph (3)) by—

(A) inserting “, except as provided in subsection (c),” immediately before “from time to time” in the first sentence thereof;

(B) striking out “four months” and inserting “one hundred and eighty days” in lieu thereof in the first sentence thereof;

(C) striking out “and decide the same as speedily as possible” at the end of the last sentence thereof; and

(D) inserting at the end thereof the following new sentences:

“Notwithstanding any other provision of law, the Commission shall complete such hearing under this section within sixty days; the initial decision resulting therefrom, if any, shall be submitted in writing to the Commission within one hundred and twenty days; and the Commission shall issue a final decision thereon within one hundred and eighty days. The sixty-day, one hundred and twenty-day, and one hundred and eighty-day periods referred to in the preceding sentence shall each begin on the day on which such rate, fare, charge, classification, regulation, or practice first takes effect or, in the case of suspended matter, shall begin on the day on which such matter would have otherwise gone into effect. However, the Commission may, in its discretion and for good cause, extend the time period or suspension period for a period of not more than sixty days, if three or more Commissioners agree to such an extension. If such extension is granted, the Commission shall report in writing to Congress within ten days from the granting of such extension together with—

“(A) a full explanation of the reasons for the extension,

“(B) the issues involved in the matter before the Commission,

“(C) the names of the personnel of the Commission working on such matter, and

“(D) a record of how each Commissioner voted on the extension.

If a final decision is not issued by the Commission within the one hundred and eighty day period, or by the end of any extension period, such rate, fare, charge, classification, regulation, or practice shall, for purposes of this section, thereafter be deemed to be just and reasonable. However, if the Commission finds that it is unable to issue a final decision within such period or within such extension due to delays which are directly attributable to the proponent of such rate, charge, classification, regulation, or practice, the Commission may disapprove such rate, fare, charge, classification, regulation, or practice, upon the expiration of such period or extension. This provision shall not preclude any remedies available pursuant to section 22 of the Shipping Act of 1916. Notwithstanding any other provision of law, in providing a hearing for the purposes of this Act, it shall be adequate to provide an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties. Any such conference may be chaired by an individual Commissioner, an administrative law judge, or any designated employee of the Commission.”;

(5) by adding at the end thereof the following new subsection:

“(c)(1) Notwithstanding any other provision of this section, the Commission may not suspend—

“(A) any tariff schedule or service which extends to any additional port, actual service at the rates of the carrier involved for similar service already in effect at the nearest port of call to such additional port; or

“(B) the operation of that portion of any changed rate, fare, or charge representing an increase or decrease of 5 per centum or less and filed as part of a general increase in rates or a general decrease in rates, except that the aggregate of such changes exempt from suspension shall not exceed 5 per centum during any period of twelve consecutive months; nothing in this subparagraph shall be construed as establishing a presumption that any increase or decrease in excess of 5 per centum is not just and reasonable, or that any increase or decrease less than 5 per centum is just and reasonable.

Refunds.

“(2) If the Commission finds, as a result of any proceeding under this section with respect to a general increase in rates, that any unsuspended portion of the increase is not just and reasonable, the Commission shall order the carrier involved to refund to any person who was charged on the basis of such general increase an amount equal to that portion thereof found to be not just and reasonable plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the refund applies.”.

SEC. 4. Section 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845a) is amended by changing the period at the end thereof to a colon, and inserting thereafter the following: “*Provided further*, That upon such finding of unjustness or unreasonableness in a proceeding instituted by a complainant pursuant to the provisions of section 22 of the Shipping Act, 1916, the Commission shall direct full reparation to the complainant of the difference between the charge collected and the just and reasonable rate, fare, or charge, plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the reparation applies.”.

46 USC 821.

SEC. 5. This Act shall take effect ninety days after enactment.

Effective date.

46 USC 843 note.

Approved October 18, 1978.

#### LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-474 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 95-1240 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

May 8, considered and passed House.

Oct. 3, considered and passed Senate.