

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.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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.
40901(b)	46 App.:1718(d).	

§ 40902. Financial responsibility

(a) IN GENERAL.—A person may not 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.

(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or other surety obtained under this section—

- (1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title;
- (2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

- (3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) REGULATIONS ON COURT JUDGMENTS.—The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the dam-

ages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(d) RESIDENT AGENT.—An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40902	46 App.:1718(b).	Pub. L. 98-237, §19(b), Mar. 20, 1984; added Pub. L. 105-258, title I, §116(4), Oct. 14, 1998, 112 Stat. 1913.

In subsection (b), in paragraphs (2) and (3), the words “described in section 1702(17) of this Appendix” are omitted as unnecessary.

§ 40903. Suspension or revocation of license

(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary—

- (1) is not qualified to provide intermediary services; or
- (2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER SURETY.—The Commission may revoke an ocean transportation intermediary's license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40903	46 App.:1718(c).	Pub. L. 98-237, §19(c), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912.

In subsection (a)(2), the words “lawful” and “rule” are omitted as unnecessary.

§ 40904. Compensation by common carriers

(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title) and has—

- (1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of the space; and
- (2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) DUAL COMPENSATION.—A common carrier may not pay compensation for services de-

scribed in subsection (a) more than once on the same shipment.

(c) **BENEFICIAL INTEREST SHIPMENTS.**—An ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.

(d) **LIMITS ON AUTHORITY OF CONFERENCE OR GROUP.**—A conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean freight forwarder may not—

(1) deny a member of the conference or group the right, upon notice of not more than 5 days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(2) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under a tariff and assessed against the cargo on which the services of the ocean freight forwarder are provided.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40904	46 App.:1718(e).	Pub. L. 98-237, §19(e), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912.

In this section, the words “ocean freight forwarder” are substituted for “ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix” and “ocean transportation intermediary” because the definition of “ocean transportation intermediary” in section 1702(17)(A) contains a definition of “ocean freight forwarder” which is restated as a separate definition.

In subsection (d)(1), the word “calendar” is omitted as unnecessary.

CHAPTER 411—PROHIBITIONS AND PENALTIES

Sec.	
41101.	Joint ventures and consortiums.
41102.	General prohibitions.
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§ 41101. Joint ventures and consortiums

In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41101	46 App.:1709(e).	Pub. L. 98-237, §10(e), Mar. 20, 1984, 98 Stat. 80.

§ 41102. General prohibitions

(a) **OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.**—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

(b) **OPERATING CONTRARY TO AGREEMENT.**—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

(c) **PRACTICES IN HANDLING PROPERTY.**—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41102(a)	46 App.:1709(a)(1).	Pub. L. 98-237, §10(a), Mar. 20, 1984, 98 Stat. 77.
41102(b)	46 App.:1709(a)(2), (3).	
41102(c)	46 App.:1709(d)(1).	Pub. L. 98-237, §10(d)(1), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(c)(2), Oct. 14, 1998, 112 Stat. 1909.

§ 41103. Disclosure of information

(a) **PROHIBITION.**—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

(2) may improperly disclose its business transaction to a competitor.

(b) **EXCEPTIONS.**—Subsection (a) does not prevent providing the information—

(1) in response to legal process;

(2) to the Federal Maritime Commission or an agency of the United States Government; or

(3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

(c) **DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.**—An ocean common car-