

In subsection (b), the words “is subject to an action in rem to enforce the lien” are substituted for “may be libeled therefore” to modernize the language.

§ 41108. Additional penalties

(a) **SUSPENSION OF TARIFFS.**—For a violation of section 41104(1), (2), or (7) of this title, the Federal Maritime Commission may suspend any or all tariffs of the common carrier, or that common carrier’s right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

(b) **OPERATING UNDER SUSPENDED TARIFF.**—A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended, or after its right to use that tariff has been suspended, is liable to the United States Government for a civil penalty of not more than \$50,000 for each shipment.

(c) **FAILURE TO PROVIDE INFORMATION.**—

(1) **PENALTIES.**—If the Commission finds, after notice and opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 41303 of this title, the Commission may—

(A) suspend any or all tariffs of the carrier or the carrier’s right to use any or all tariffs of conferences of which it is a member; and

(B) request the Secretary of Homeland Security to refuse or revoke any clearance required for a vessel operated by the carrier, and when so requested, the Secretary shall refuse or revoke the clearance.

(2) **DEFENSE BASED ON FOREIGN LAW.**—If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that information or documents located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. On receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the information or documents are alleged to be located for the purpose of assisting the Commission in obtaining the information or documents.

(d) **IMPAIRING ACCESS TO FOREIGN TRADE.**—If the Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with another person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including imposing any of the penalties authorized by this section. The Commission also may take any of the actions authorized by sections 42304 and 42305 of this title.

(e) **SUBMISSION OF ORDER TO PRESIDENT.**—Before an order under this section becomes effective, it shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41108(a)	46 App.:1712(b)(1).	Pub. L. 98–237, §13(b), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105–258, title I, §112(b), Oct. 14, 1998, 112 Stat. 1911.
41108(b)	46 App.:1712(b)(3).	
41108(c)	46 App.:1712(b)(2), (4), (5).	
41108(d)	46 App.:1712(b)(6). 46 App.:1710a(h) (re- lated to 1712(b)(6)).	Pub. L. 100–418, title X, §10002(h) (related to §13(b)(6)), Aug. 23, 1988, 102 Stat. 1572; Pub. L. 105–258, title I, §111(7), Oct. 14, 1998, 112 Stat. 1911.
41108(e)	46 App.:1712(b)(7).	

In subsection (c)(1)(B), the words “Secretary of Homeland Security” are substituted for “Secretary of the Treasury” because the functions of the Secretary of the Treasury relating to the Customs Service were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178).

§ 41109. Assessment of penalties

(a) **GENERAL AUTHORITY.**—Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.

(b) **FACTORS IN DETERMINING AMOUNT.**—In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.

(c) **EXCEPTION.**—A civil penalty may not be imposed for conspiracy to violate section 41102(a) or 41104(1) or (2) of this title or to defraud the Commission by concealing such a violation.

(d) **PROHIBITED BASIS OF PENALTY.**—The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

(e) **TIME LIMIT.**—A proceeding to assess a civil penalty under this section must be commenced within 5 years after the date of the violation.

(f) **REVIEW OF CIVIL PENALTY.**—A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28.

(g) **CIVIL ACTIONS TO COLLECT.**—If a person does not pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the Commission unless it finds that the order was not regularly made and duly issued.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1544.)