

. . . to give information” to eliminate unnecessary words. The words “firm, corporation” are omitted as unnecessary because firms and corporations are persons.

In subsection (c)(2), the words “may not prevent” are substituted for “Nor shall it be prohibited . . . to prevent” to reflect the probable intent of Congress. The words “but the use of such information for any other purpose prohibited by this chapter or any other Act is prohibited” are omitted as unnecessary.

§ 41104. Common carriers

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—

(1) allow a person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or any other unjust or unfair device or means;

(2) provide service in the liner trade that is—

(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

(B) under a tariff or service contract that has been suspended or prohibited by the Federal Maritime Commission under chapter 407 or 423 of this title;

(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, with due regard being given to the proper loading of the vessel and the available tonnage;

(D) loading and landing of freight; or

(E) adjustment and settlement of claims;

(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;

(6) use a vessel in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;

(7) offer or pay any deferred rebates;

(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

(10) unreasonably refuse to deal or negotiate;

(11) knowingly and willfully accept cargo from or transport cargo for the account of an

ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title; or

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1541.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41104	46 App.:1709(b) (1)-(12).	Pub. L. 98-237, §10(b)(1)-(12), Mar. 20, 1984, 98 Stat. 77; Pub. L. 101-595, title VII, §710(c), Nov. 16, 1990, 104 Stat. 2997; Pub. L. 102-251, title II, §201(b), Mar. 9, 1992, 106 Stat. 60; Pub. L. 105-258, title I, §109(a), Oct. 14, 1998, 112 Stat. 1909; Pub. L. 105-383, title IV, §424(b), Nov. 13, 1998, 112 Stat. 3441.

§ 41105. Concerted action

A conference or group of two or more common carriers may not—

(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as—

(A) authorized by section 40303(d) of this title;

(B) required by the law of the United States or the importing or exporting country; or

(C) agreed to by a shipper in a service contract;

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1542.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41105	46 App.:1709(c).	Pub. L. 98-237, §10(c), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(b), Oct. 14, 1998, 112 Stat. 1910; Pub. L. 105-383, title IV, §424(b), Nov. 13, 1998, 112 Stat. 3441.

In paragraph (5), the words "ocean freight forwarder" are substituted for "ocean transportation intermediary, as defined by section 1702(17)(A) of this Appendix" 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.

§ 41106. Marine terminal operators

A marine terminal operator may not—

(1) agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, a common carrier or ocean tramp;

(2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person; or

(3) unreasonably refuse to deal or negotiate.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41106(1)	46 App.:1709(d)(2).	Pub. L. 98-237, §10(d)(2), (3) (related to (b)(10)), (4), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(c), Oct. 14, 1998, 112 Stat. 1910.
41106(2)	46 App.:1709(d)(4).	
41106(3)	46 App.:1709(d)(3) (related to (b)(10)).	

§ 41107. Monetary penalties

(a) IN GENERAL.—A person that violates this part or a regulation or order of the Federal Maritime Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed \$5,000 for each violation or, if the violation was willfully and knowingly committed, \$25,000 for each violation. Each day of a continuing violation is a separate violation.

(b) LIEN ON CARRIER'S VESSELS.—The amount of a civil penalty imposed on a common carrier

under this section constitutes a lien on the vessels operated by the carrier. Any such vessel is subject to an action in rem to enforce the lien in the district court of the United States for the district in which it is found.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41107	46 App.:1712(a).	Pub. L. 98-237, §13(a), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, §112(a), Oct. 14, 1998, 112 Stat. 1911.

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