

(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

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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows include 41108(a) through 41108(e) with their respective legal sources.

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.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows include 41109(a) through 41109(g) with their respective legal sources.

CHAPTER 413—ENFORCEMENT

- Sec. 41301. Complaints.
41302. Investigations.
41303. Discovery and subpoenas.
41304. Hearings and orders.
41305. Award of reparations.
41306. Injunctive relief sought by complainants.
41307. Injunctive relief sought by the Commission.
41308. Enforcement of subpoenas and orders.
41309. Enforcement of reparation orders.

§ 41301. Complaints

(a) IN GENERAL.—A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

(b) NOTICE AND RESPONSE.—The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.

(c) IF COMPLAINT NOT SATISFIED.—If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows include 41301(a) through 41301(c) with their respective legal sources.