

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.

In subsection (a), the words “If the complaint is filed within 3 years after the claim accrues” are substituted for “For any complaint filed within 3 years after the cause of action accrued” in 46 App. U.S.C. 1710(g) to alert the reader to that time limitation.

**§ 41302. Investigations**

(a) IN GENERAL.—The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct or agreement that the Commission believes may be in violation of this part. The Commission may by order disapprove, cancel, or modify any agreement that operates in violation of this part.

(b) EFFECTIVENESS OF AGREEMENT DURING INVESTIGATION.—Unless an injunction is issued under section 41306 or 41307 of this title, an agreement under investigation by the Commission remains in effect until the Commission issues its order.

(c) DATE FOR DECISION.—Within 10 days after the initiation of a proceeding under this section or section 41301 of this title, the Commission shall set a date by which it will issue its final decision. The Commission by order may extend the date for good cause.

(d) SANCTIONS FOR DELAY.—If, within the period for final decision under subsection (c), the Commission determines that it is unable to issue a final decision because of undue delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.

(e) REPORT.—The Commission shall make a written report of every investigation under this part in which a hearing was held, stating its conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of the report to all parties and publish the report for public information. A published report is competent evidence in a court of the United States.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41302(a) .....	46 App.:1710(c) (1st, 3d sentences).	Pub. L. 98-237, §11(c)-(f), Mar. 20, 1984, 98 Stat. 80.
41302(b) .....	46 App.:1710(c) (2d sentence).	
41302(c) .....	46 App.:1710(d).	
41302(d) .....	46 App.:1710(e).	
41302(e) .....	46 App.:1710(f).	

**§ 41303. Discovery and subpoenas**

(a) IN GENERAL.—In an investigation or adjudicatory proceeding under this part—

(1) the Federal Maritime Commission may subpoena witnesses and evidence; and

(2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(b) WITNESS FEES.—Unless otherwise prohibited by law, a witness is entitled to the same fees and mileage as in the courts of the United States.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41303 .....	46 App.:1711.	Pub. L. 98-237, §12, Mar. 20, 1984, 98 Stat. 81.

In subsection (a)(1), the words “may subpoena witnesses and evidence” are substituted for “may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence” to eliminate unnecessary words.

In subsection (a)(2), the words “shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.)” are substituted for “shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States” for clarity.

**§ 41304. Hearings and orders**

(a) OPPORTUNITY FOR HEARING.—The Federal Maritime Commission shall provide an opportunity for a hearing before issuing an order relating to a violation of this part or a regulation prescribed under this part.

(b) MODIFICATION OF ORDER.—The Commission may reverse, suspend, or modify any of its orders.

(c) REHEARING.—On application of a party to a proceeding, the Commission may grant a rehearing of the same or any matter determined in the proceeding. Except by order of the Commission, a rehearing does not operate as a stay of an order.

(d) PERIOD OF EFFECTIVENESS.—An order of the Commission remains in effect for the period specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1546.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41304(a) .....	46 App.:1713(a) (1st sentence).	Pub. L. 98-237, §14(a), (b), Mar. 20, 1984, 98 Stat. 83.
41304(b) .....	46 App.:1713(b) (1st sentence 1st-12th words).	
41304(c) .....	46 App.:1713(b) (1st sentence 13th-last words, last sentence).	
41304(d) .....	46 App.:1713(a) (last sentence).	

In subsection (a), the words “upon sworn complaint or on its own motion” are omitted as unnecessary.

**§ 41305. Award of reparations**

(a) DEFINITION.—In this section, the term “actual injury” includes the loss of interest at commercial rates compounded from the date of injury.

(b) BASIC AMOUNT.—If the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part.

(c) ADDITIONAL AMOUNTS.—On a showing that the injury was caused by an activity prohibited by section 41102(b), 41104(3) or (6), or 41105(1) or (3) of this title, the Commission may order the payment of additional amounts, but the total recovery of a complainant may not exceed twice the amount of the actual injury.