

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41103(a)	46 App.:1709(b)(13), (d)(3) (related to (b)(13)), (5).	Pub. L. 98-237, §10(b)(13), (words after cl. (13)), (d)(3) (related to (b)(13)), (5), Mar. 20, 1984, 98 Stat. 79, 80; Pub. L. 101-595, title VII, §710(c)(1), (2), Nov. 16, 1990, 104 Stat. 2997; Pub. L. 105-258, title I, §109(a)(10), (11), (16), (17), (c)(3), Oct. 14, 1998, 112 Stat. 1910, 1911.
41103(b)	46 App.:1709(b) (next-to-last sentence).	
41103(c)	46 App.:1709(b) (last sentence).	

In subsection (a), the words “marine terminal operator, or ocean freight forwarder” are added because of 46 App. U.S.C. 1709(d)(3) and (5). The words “ocean freight forwarder” are substituted for “ocean transportation intermediaries, as defined by section 1702(17)(A) of this Appendix” in 46 App. U.S.C. 1709(d)(5) 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 (b), the words “does not prevent” are substituted for “Nothing . . . shall be construed to prevent” to eliminate unnecessary words.

In subsection (c)(1), the words “may give information” are substituted for “Nor shall it be prohibited . . . 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) IN GENERAL.—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 a non-vessel-operating common carrier that does not have a tariff as required by section 40501 of this title, or an ocean transportation intermediary that does not have a bond, insurance, or other surety as required by section 40902 of this title;

(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; or

(13) continue to participate simultaneously in a rate discussion agreement and an agreement to share vessels, in the same trade, if the interplay of the authorities exercised by the specified agreements is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.

(b) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, there is no private right of action to enforce the prohibition under subsection (a)(13).

(c) AGREEMENT VIOLATION.—Participants in an agreement found by the Commission to violate subsection (a)(13) shall have 90 days from the date of such Commission finding to withdraw from the agreement as necessary to comply with that subsection.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1541; Pub. L. 115-282, title VII, §708(a), Dec. 4, 2018, 132 Stat. 4295.)

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.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-282, §708(a)(1), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(11). Pub. L. 115-282, §708(a)(2)(A), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “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”.

Subsec. (a)(13). Pub. L. 115-282, §708(a)(2)(B), (C), added par. (13).

Subsecs. (b), (c). Pub. L. 115-282, §708(a)(3), added subsecs. (b) and (c).

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-282, title VII, §708(b), Dec. 4, 2018, 132 Stat. 4296, provided that: “Section 41104(a)(13) of title 46, United States Code, as amended, shall apply to any agreement filed or with an effective date before, on, or after the date of enactment of this Act [Dec. 4, 2018].”

§ 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) negotiate with a tug or towing vessel service provider on any matter relating to rates or services provided within the United States by those tugs or towing vessels;

(6) with respect to a vessel operated by an ocean common carrier within the United States, negotiate for the purchase of certain covered services, 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;

(7) 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;

(8) 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;

(9) 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

(10) 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; Pub. L. 115-282, title VII, §709(a), Dec. 4, 2018, 132 Stat. 4296.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

AMENDMENTS

2018—Pars. (5) to (10). Pub. L. 115-282 added pars. (5) and (6) and redesignated former pars. (5) to (8) as (7) to (10), respectively.

§ 41105A. Authority

Nothing in section 41105, as amended by the Federal Maritime Commission Authorization Act of 2017, shall be construed to limit the authority of the Department of Justice regarding antitrust matters.

(Added Pub. L. 115-282, title VII, §709(b)(1), Dec. 4, 2018, 132 Stat. 4296.)