

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40904 .....	46 App.:1718(e).	Pub. L. 98-237, §19(e), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912.

In this section, the words “ocean freight forwarder” are substituted for “ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix” and “ocean transportation intermediary” 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 (d)(1), the word “calendar” is omitted as unnecessary.

**CHAPTER 411—PROHIBITIONS AND PENALTIES**

- Sec.
- 41101. Joint ventures and consortiums.
- 41102. General prohibitions.
- 41103. Disclosure of information.
- 41104. Common carriers.
- 41105. Concerted action.
- 41105A. Authority.
- 41106. Marine terminal operators.
- 41107. Monetary penalties.
- 41108. Additional penalties.
- 41109. Assessment of penalties.

**Editorial Notes**

AMENDMENTS

2018—Pub. L. 115-282, title VII, §709(b)(2), Dec. 4, 2018, 132 Stat. 4296, added item 41105A.

**§ 41101. Joint ventures and consortiums**

In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41101 .....	46 App.:1709(e).	Pub. L. 98-237, §10(e), Mar. 20, 1984, 98 Stat. 80.

**§ 41102. General prohibitions**

(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

- (1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or
- (2) the operation is not in accordance with the terms of the agreement or any modifica-

tions to the agreement made by the Federal Maritime Commission.

(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41102(a) .....	46 App.:1709(a)(1).	Pub. L. 98-237, §10(a), Mar. 20, 1984, 98 Stat. 77.
41102(b) .....	46 App.:1709(a)(2), (3).	
41102(c) .....	46 App.:1709(d)(1).	Pub. L. 98-237, §10(d)(1), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(c)(2), Oct. 14, 1998, 112 Stat. 1909.

**§ 41103. Disclosure of information**

(a) PROHIBITION.—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

- (1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or
- (2) may improperly disclose its business transaction to a competitor.

(b) EXCEPTIONS.—Subsection (a) does not prevent providing the information—

- (1) in response to legal process;
- (2) to the Federal Maritime Commission or an agency of the United States Government; or
- (3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.—An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information—

- (1) may give information to the conference or any person or agency designated by the conference, for the purpose of—
  - (A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;
  - (B) determining whether a member of the conference has breached the conference agreement; or
  - (C) compiling statistics of cargo movement; and
- (2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

## HISTORICAL AND REVISION NOTES

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