

§ 40104. Reports filed with the Commission

(a) REPORTS.—

(1) IN GENERAL.—The Federal Maritime Commission may require a common carrier or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee of the common carrier or marine terminal operator to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the common carrier or marine terminal operator, as applicable.

(2) REQUIREMENTS.—Any report, account, record, rate, charge, or memorandum required to be filed under paragraph (1) shall—

(A) be made under oath if the Commission requires; and

(B) be filed in the form and within the time prescribed by the Commission.

(3) LIMITATION.—The Commission shall—

(A) limit the scope of any filing ordered under this section to fulfill the objective of the order; and

(B) provide a reasonable period of time for respondents to respond based upon their capabilities and the scope of the order.

(b) CONFERENCE MINUTES.—Conference minutes required to be filed with the Commission under this section may not be released to third parties or published by the Commission.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1527; Pub. L. 115-282, title VII, § 705, Dec. 4, 2018, 132 Stat. 4294.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 40104, 46 App.:1714, Pub. L. 98-237, §15, Mar. 20, 1984, 98 Stat. 84; Pub. L. 98-595, §3(b)(3), Oct. 30, 1984, 98 Stat. 3133; Pub. L. 105-258, title I, §113, Oct. 14, 1998, 112 Stat. 1912.

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-282 amended subsec. (a) generally. Prior to amendment, text read as follows: “The Federal Maritime Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the carrier. The report, account, record, rate, charge, or memorandum shall be made under oath if the Commission requires, and shall be filed in the form and within the time prescribed by the Commission.”

CHAPTER 403—AGREEMENTS

Table with 2 columns: Sec., Description. Rows: 40301. Application. 40302. Filing requirements. 40303. Content requirements. 40304. Commission action. 40305. Assessment agreements. 40306. Nondisclosure of information. 40307. Exemption from antitrust laws.

§ 40301. Application

(a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an agreement between or among ocean common carriers to—

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or regulate the number and character of voyages between ports;

(4) regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;

(6) control, regulate, or prevent competition in international ocean transportation; or

(7) discuss and agree on any matter related to a service contract.

(b) MARINE TERMINAL OPERATOR AGREEMENTS.—This part applies to an agreement between or among marine terminal operators, or between or among one or more marine terminal operators and one or more ocean common carriers, to—

(1) discuss, fix, or regulate rates or other conditions of service; or

(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent the agreement involves ocean transportation in the foreign commerce of the United States.

(c) ACQUISITIONS.—This part does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

(d) MARITIME LABOR AGREEMENTS.—This part does not apply to a maritime labor agreement. However, this subsection does not exempt from this part any rate, charge, regulation, or practice of a common carrier that is required to be set forth in a tariff or is an essential term of a service contract, whether or not the rate, charge, regulation, or practice arises out of, or is otherwise related to, a maritime labor agreement.

(e) ASSESSMENT AGREEMENTS.—This part (except sections 40305 and 40307(a)) does not apply to an assessment agreement.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1528.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows: 40301(a)-(d), 40301(e). Sources include 46 App.:1703(a)-(f) and Pub. L. 98-237, §4, Mar. 20, 1984, 98 Stat. 70; Pub. L. 105-258, title I, §103, Oct. 14, 1998, 112 Stat. 1904.

§ 40302. Filing requirements

(a) IN GENERAL.—A true copy of every agreement referred to in section 40301(a) or (b) of this title shall be filed with the Federal Maritime Commission. If the agreement is oral, a com-

plete memorandum specifying in detail the substance of the agreement shall be filed.

(b) EXCEPTIONS.—Subsection (a) does not apply to—

(1) an agreement related to transportation to be performed within or between foreign countries; or

(2) an agreement among common carriers to establish, operate, or maintain a marine terminal in the United States.

(c) REGULATIONS.—The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and any additional information and documents necessary to evaluate the agreement.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1528.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40302	46 App.:1704(a).	Pub. L. 98-237, §5(a), Mar. 20, 1984, 98 Stat. 70; Pub. L. 98-595, §3(b)(1), Oct. 30, 1984, 98 Stat. 3132.

§ 40303. Content requirements

(a) OCEAN COMMON CARRIER AGREEMENTS.—

(1) RESTRICTIONS.—An ocean common carrier agreement may not—

(A) prohibit or restrict a member of the agreement from engaging in negotiations for a service contract with a shipper;

(B) require a member of the agreement to disclose a negotiation on a service contract, or the terms of a service contract, other than those terms required to be published under section 40502(d) of this title; or

(C) adopt mandatory rules or requirements affecting the right of an agreement member to negotiate and enter into a service contract.

(2) VOLUNTARY GUIDELINES.—An ocean common carrier agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. Any guidelines adopted shall be submitted confidentially to the Federal Maritime Commission.

(b) CONFERENCE AGREEMENTS.—Each conference agreement must—

(1) state its purpose;

(2) provide reasonable and equal terms for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership on reasonable notice without penalty;

(4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 41105(1) or (3) of this title;

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes; and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering requests and complaints of shippers; and

(8) provide that—

(A) any member of the conference may take independent action on a rate or service item on not more than 5 days' notice to the conference; and

(B) except for an exempt commodity not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

(c) INTERCONFERENCE AGREEMENTS.—Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

(d) VESSEL SHARING AGREEMENTS.—

(1) IN GENERAL.—An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a liner vessel documented under section 12103 or 12111(c) of this title may agree with an ocean common carrier described in paragraph (2) to which it charters or subcharters the vessel or space on the vessel that the charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for vessels of the United States.

(2) CARRIER DESCRIBED.—An ocean common carrier described in this paragraph is one that is not the owner, operator, or bareboat charterer for at least one year of liner vessels of the United States that are eligible to be included in the Maritime Security Fleet Program and are enrolled in an Emergency Preparedness Program under chapter 531 of this title.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1529.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40303(a)	46 App.:1704(c).	Pub. L. 98-237, §5(b)-(d), Mar. 20, 1984, 98 Stat. 70; Pub. L. 105-258, title I, §104(a), Oct. 14, 1998, 112 Stat. 1904.
40303(b)	46 App.:1704(b).	
40303(c)	46 App.:1704(d).	
40303(d)	46 App.:1704(g).	Pub. L. 98-237, §5(g), Mar. 20, 1984; as added Pub. L. 105-383, title IV, §424(a), Nov. 13, 1998, 112 Stat. 3440.

In subsection (c)(8), the word “calendar” is omitted as unnecessary.

In subsection (d), the words “vessel of the United States” are substituted for “United States-flag vessel” (and similar variations) for consistency in the revised title.