

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.

**Editorial Notes**

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).

**Statutory Notes and Related Subsidiaries**

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.

**Editorial Notes**

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.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 41105, as amended by the Federal Maritime Commission Authorization Act of 2017, referred to in text, is section 41105 of this title as amended by title VII of Pub. L. 115–282.

#### § 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)<sup>1</sup> 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.)

<sup>1</sup> See References in Text note below.