Public Law 96-25
96th Congress

An Act

To amend the Shipping Act, 1916, to strengthen the provisions prohibiting rebating practices in the United States foreign trades.

June 19, 1979
[S. 199]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Shipping Act Amendments of 1979".

Shipping Act Amendments of 1979.
46 USC 842 note.

SEC. 2. Section 16 of the Shipping Act, 1916, is amended by striking "$5,000" in the sixth paragraph, and inserting, in lieu thereof, "$25,000".

Increased civil penalties.
46 USC 815.

SEC. 3. Section 18(b) of the Shipping Act, 1916, is amended by deleting subsection (6) thereof and by adding the following new language in lieu thereof:

Increased penalties.
46 USC 817.

"(6) Whoever violates any provision of this section, other than subsection (b)(3) hereof involving rebates or refunds shall be subject to a civil penalty of not more than $5,000 for each day such violation continues.

"(7) Whoever violates subsection (b)(3) hereof by means of rebates or refunds, shall be subject to a civil penalty of not more than $25,000 for each shipment on which a rebate or refund was paid and to suspension by the Commission of any or all tariffs filed by or on behalf of such carrier, or suspension of that carrier's right to utilize any or all tariffs of conferences of which that carrier may be a member, for a period not to exceed twelve months. Any carrier whose tariffs or rights of use thereof have been suspended pursuant to this paragraph and who accepts cargo for carriage during the suspension period which cargo otherwise would have been governed by the provisions of the suspended tariff(s) shall be subject to a civil penalty of not more than $50,000 for each shipment so accepted.

"For purposes of this subsection and section 22(c) of this Act, a shipment shall mean all of that cargo, the carriage of which is evidenced by a single bill of lading.".

Post, p. 72.

Written certifications.
46 USC 820.

SEC. 4. Section 21 of the Shipping Act, 1916, is amended by designating the existing two paragraphs as subsection "(a)" and by adding a new subsection (b) as follows:

"(b) The Commission shall require the chief executive officer of every vessel operating common carrier by water in foreign commerce and to the extent it deems feasible, may require any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to this Act, to file a periodic, written certification under oath with the Commission attesting to—

"(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this Act;

"(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

"(3) the details of the efforts made, within the company or otherwise, to prevent or correct illegal rebating; and

"(4) full cooperation with the Commission in its investigation of illegal rebating or refunds in United States foreign trades, and in its efforts to end such illegal practices.

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The Commission may by regulation prescribe the form and content of any certification required under the authority of this subsection. Failure to file any such certification shall result in a civil penalty of not more than $5,000 for each day such violation continues.".

Violation, penalty.

46 USC 821.

SEC. 5. Section 22 of the Shipping Act, 1916, is amended as follows:

(a) designate the two existing paragraphs as "(a)" and "(b)", respectively;

(b) amend subsection (b), as designated by this Act, by deleting therefrom the phrase "except as to orders for the payment of money,"; and

(c) immediately after subsection (b), as designated by this Act, insert the following:

Adjudicatory investigation.

"(c)(1) In addition to, and without limiting the authority granted to the Commission by subsections (a) and (b) hereof, the Commission may, on its own motion, institute an adjudicatory investigation into possible violations of section 16 (other than paragraphs First and Third) involving rebates or refunds in foreign commerce or violations of section 18(b)(3) involving rebates or refunds, with the powers set forth in subsection (c)(2) hereof in addition to those already contained in sections 27, 43, and other sections of this Act.

46 USC 815.
46 USC 817.
46 USC 826, 841a.

Suspension of tariffs.

"(2) Failure on the part of any common carrier, respondent to a proceeding instituted pursuant to subsection (c)(1), or any other person directly or indirectly controlling, controlled by, or under common control with such respondent carrier, to comply with any subpena or any duly issued order compelling an answer to interrogatories or to designated questions propounded by deposition or compelling production of documents in relation to any investigation conducted under subsection (c)(1), shall authorize the Commission to issue an order to show cause why any or all tariffs filed pursuant to section 18(b) of this Act, by or on behalf of the respondent carrier, or any or all rights of the respondent carrier to utilize such tariffs in the case of conference tariffs, should not be suspended until that carrier or any person directly or indirectly controlling, controlled by, or under common control with such carrier, has fully responded to the pertinent deposition, interrogatory, production request or motion, or subpena, and after such proceeding, to so suspend those tariffs or the respondent carrier's rights to utilize such tariffs. Any carrier whose tariff(s) or rights of use thereof have been suspended pursuant to this subparagraph and who accepts cargo for carriage during the suspension period which cargo otherwise would have been governed by the provisions of the suspended tariff(s) shall be subject to a civil penalty of not more than $50,000 for each shipment so accepted.

46 USC 817; *ante*, p. 71.

"(3) If, in defense of its failure to comply with a subpena or discovery order issued in relation to any investigation conducted under subsection (c)(1), a common carrier alleges documents or information are located in a foreign country and cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of such failure to comply and of the allegation relating to foreign laws. Upon receiving such notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

Suspension order; submittal to President.

Ante, p. 71.

"(4) Before any tariff suspension ordered pursuant to subsection (c)(2), or section 18(b)(7) of this Act, becomes effective, it shall be immediately submitted to the President who may, within ten days after receiving it, disapprove any such order if he finds that disap-

proval is required for reasons of the national defense or the foreign policy of the United States.".

SEC. 6. Section 23 of the Shipping Act, 1916, is amended by deleting therefrom the language ", other than for the payment of money,". 46 USC 822.

SEC. 7. Section 27 of the Shipping Act, 1916, is amended by deleting from subsection (b) thereof the phrase "other than for the payment of money". 46 USC 826.

SEC. 8. Section 29 of the Shipping Act, 1916, is amended by deleting therefrom the phrase "other than an order for the payment of money,". 46 USC 828.

SEC. 9. Section 30 of the Shipping Act, 1916, is amended in the initial and final paragraphs thereof by deleting the phrase "for the payment of money" and by inserting, in lieu thereof, the phrase "for the payment of reparation". 46 USC 829.

SEC. 10. Section 32 of the Shipping Act, 1916, is amended by inserting at the end thereof the following new subsections: 46 USC 831.

"(d) No penalty shall be imposed on any person for conspiracy after August 29, 1972: (1) to rebate or refund in violation of the initial paragraph or paragraph Second of section 16, or under section 18(b)(3) of this Act; or (2) to defraud the Commission by concealment of such rebates or refunds in any manner. 46 USC 815. 46 USC 817.

"(e) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this Act: *Provided, however,* That, in order to assess such penalties a formal proceeding under section 22 of this Act shall be commenced within five years from the date when the violation occurred.". 46 USC 821; *ante,* p. 72.

SEC. 11. The provisions of this Act, including the amendments made by this Act, shall become effective immediately upon its date of enactment. Effective date. 46 USC 815 note.

Approved June 19, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-232 accompanying H.R. 3055 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 96-147 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 125 (1979):
May 23, considered and passed Senate.
June 4, H.R. 3055 considered and passed House; passage vacated and S. 199, amended, passed in lieu.
June 5, Senate agreed to House amendments.