

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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, shall 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) unreasonably refuse cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods;

(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 against any commodity group or type of shipment or 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, including with respect to vessel space accommodations provided by an ocean common carrier;

(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;

(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;

(14) assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations);

(15) invoice any party for demurrage or detention charges unless the invoice includes information as described in subsection (d) showing that such charges comply with—

(A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and

(B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled “Interpretive Rule on Demurrage and Detention Under the Shipping Act” (or successor rule); or

(16) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage against any commodity group or type of shipment.

(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.

(d) DETENTION AND DEMURRAGE INVOICE INFORMATION.—

(1) INACCURATE INVOICE.—If the Commission determines, after an investigation in response to a submission under section 41310, that an invoice under subsection (a)(15) was inaccurate or false, penalties or refunds under section 41107 shall be applied.

(2) CONTENTS OF INVOICE.—An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

- (A) Date that container is made available.
- (B) The port of discharge.
- (C) The container number or numbers.
- (D) For exported shipments, the earliest return date.
- (E) The allowed free time in days.
- (F) The start date of free time.
- (G) The end date of free time.
- (H) The applicable detention or demurrage rate on which the daily rate is based.
- (I) The applicable rate or rates per the applicable rule.
- (J) The total amount due.
- (K) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
- (L) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
- (M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

(e) SAFE HARBOR.—If a non-vessel operating common carrier passes through to the relevant shipper an invoice made by the ocean common carrier, and the Commission finds that the non-vessel operating common carrier is not otherwise responsible for the charge, then the ocean common carrier shall be subject to refunds or penalties pursuant to subsection (d)(1).

(f) ELIMINATION OF CHARGE OBLIGATION.—Failure to include the information required under subsection (d) on an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.

(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; Pub. L. 117-146, § 7(a), June 16, 2022, 136 Stat. 1274.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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(c), Oct. 14, 1998, 112 Stat. 1909; Pub. L. 105-383, title IV, § 424(b), Nov. 13, 1998, 112 Stat. 3441.

Editorial Notes

AMENDMENTS

2022—Subsec. (a). Pub. L. 117-146, § 7(a)(1)(A), substituted “shall not” for “may not” in introductory provisions.

Subsec. (a)(3). Pub. L. 117-146, § 7(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: “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;”.

Subsec. (a)(5). Pub. L. 117-146, § 7(a)(1)(C), substituted “against any commodity group or type of shipment or in the matter of rates or charges” for “in the matter of rates or charges”.

Subsec. (a)(10). Pub. L. 117-146, § 7(a)(1)(D), inserted “, including with respect to vessel space accommodations provided by an ocean common carrier” after “negotiate”.

Subsec. (a)(14) to (16). Pub. L. 117-146, § 7(a)(1)(E)-(G), added pars. (14) to (16).

Subsecs. (d) to (f). Pub. L. 117-146, § 7(a)(2), added subsecs. (d) to (f).

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].”

REGULATIONS

Pub. L. 117-146, § 7(c), (d), June 16, 2022, 136 Stat. 1276, provided that:

“(c) RULEMAKING ON UNFAIR OR UNJUSTLY DISCRIMINATORY METHODS.—Not later than 60 days after the date of enactment of this Act [June 16, 2022], the Federal Maritime Commission shall initiate a rulemaking defining unfair or unjustly discriminatory methods under section 41104(a)(3) of title 46, United States Code, as amended by this section. The Federal Maritime Commission shall issue a final rule not later than 1 year after the date of enactment of this Act.

“(d) RULEMAKING ON UNREASONABLE REFUSAL TO DEAL OR NEGOTIATE WITH RESPECT TO VESSEL SPACE ACCOMMODATIONS.—Not later than 30 days after the date of enactment of this Act, the Federal Maritime Commission, in consultation with the Commandant of the United States Coast Guard, shall initiate a rulemaking defining unreasonable refusal to deal or negotiate with respect to vessel space under section 41104(a)(10) of title 46, as amended by this section. The Federal Maritime Commission shall issue a final rule not later than 6 months after the date of enactment of this Act.”

§ 41105. Concerted action

A conference or group of two or more common carriers may not—