

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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 or refunds

(a) IN GENERAL.—A person that violates this part or a regulation or order of the Federal Maritime Commission issued under this part is lia-

ble to the United States Government for a civil penalty or, in addition to or in lieu of a civil penalty, is liable for the refund of a charge. 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 or, in addition to or in lieu of a civil penalty, the refund of a charge, 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; Pub. L. 117-146, §8(a)(1), June 16, 2022, 136 Stat. 1276.)

## 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 liable therefore” to modernize the language.

## Editorial Notes

## AMENDMENTS

2022—Pub. L. 117-146, §8(a)(1)(A), inserted “or refunds” after “penalties” in section catchline.

Subsec. (a). Pub. L. 117-146, §8(a)(1)(B), inserted “or, in addition to or in lieu of a civil penalty, is liable for the refund of a charge” after “civil penalty”.

Subsec. (b). Pub. L. 117-146, §8(a)(1)(C), inserted “or, in addition to or in lieu of a civil penalty, the refund of a charge,” after “civil penalty”.

## § 41108. Additional penalties

(a) SUSPENSION OF TARIFFS.—For a violation of paragraph (1), (2), or (7) of section 41104(a) 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 re-

quired 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; Pub. L. 117-146, §15(a), June 16, 2022, 136 Stat. 1279.)

#### HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41108(a) .....	46 App.:1712(b)(1).	Pub. L. 98-237, §13(b), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, §112(b), Oct. 14, 1998, 112 Stat. 1911.
41108(b) .....	46 App.:1712(b)(3).	
41108(c) .....	46 App.:1712(b)(2), (4), (5).	
41108(d) .....	46 App.:1712(b)(6). 46 App.:1710a(h) (related to 1712(b)(6)).	Pub. L. 100-418, title X, §10002(h) (related to §13(b)(6)), Aug. 23, 1988, 102 Stat. 1572; Pub. L. 105-258, title I, §111(7), Oct. 14, 1998, 112 Stat. 1911.
41108(e) .....	46 App.:1712(b)(7).	

In subsection (c)(1)(B), the words “Secretary of Homeland Security” are substituted for “Secretary of the Treasury” because the functions of the Secretary of the Treasury relating to the Customs Service were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2178).

#### Editorial Notes

##### AMENDMENTS

2022—Subsec. (a). Pub. L. 117-146 substituted “paragraph (1), (2), or (7) of section 41104(a)” for “section 41104(1), (2), or (7)”.

#### § 41109. Assessment of penalties

(a) GENERAL AUTHORITY.—Until a matter is referred to the Attorney General, the Federal Maritime Commission may—

(1) after notice and opportunity for a hearing, in accordance with this part—

(A) assess a civil penalty; or

(B) in addition to, or in lieu of, assessing a civil penalty under subparagraph (A), order a refund of money (including additional amounts in accordance with section 41305(c)), subject to subsection (b)(2); and

(2) compromise, modify, or remit, with or without conditions, a civil penalty or refund imposed under paragraph (1).

(b) DETERMINATION OF AMOUNT.—

(1) FACTORS FOR CONSIDERATION.—In determining the amount of a civil penalty assessed or refund of money ordered pursuant to subsection (a), the Federal Maritime Commission shall take into consideration—

(A) the nature, circumstances, extent, and gravity of the violation committed;

(B) with respect to the violator—

(i) the degree of culpability;

(ii) any history of prior offenses;

(iii) the ability to pay; and

(iv) such other matters as justice may require; and

(C) the amount of any refund of money ordered pursuant to subsection (a)(1)(B).

(2) COMMENSURATE REDUCTION IN CIVIL PENALTY.—

(A) IN GENERAL.—In any case in which the Federal Maritime Commission orders a refund of money pursuant to subsection (a)(1)(B) in addition to assessing a civil penalty pursuant to subsection (a)(1)(A), the amount of the civil penalty assessed shall be decreased by any additional amounts included in the refund of money in excess of the actual injury (as defined in section 41305(a)).

(B) TREATMENT OF REFUNDS.—A refund of money ordered pursuant to subsection (a)(1)(B) shall be—

(i) considered to be compensation paid to the applicable claimant; and

(ii) deducted from the total amount of damages awarded to that claimant in a civil action against the violator relating to the applicable violation.

(c) EXCEPTION.—A civil penalty or refund of money under subparagraph (A) or (B), respectively, of subsection (a)(1) may not be imposed for conspiracy to violate subsection (a) or (d) of section 41102 or paragraph (1) or (2) of section 41104(a) or to defraud the Commission by concealing such a violation.

(d) PROHIBITED BASIS OF PENALTY.—The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

(e) TIME LIMIT.—A proceeding to assess a civil penalty or order a refund of money under this