

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 40902 | 46 App.:1718(b). | Pub. L. 98-237, §19(b), Mar. 20, 1984; added Pub. L. 105-258, title I, §116(4), Oct. 14, 1998, 112 Stat. 1913. |

In subsection (b), in paragraphs (2) and (3), the words “described in section 1702(17) of this Appendix” are omitted as unnecessary.

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-282 inserted “advertise, hold oneself out, or” after “may not” in introductory provisions.

§ 40903. Suspension or revocation of license

(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary’s license if the Commission finds that the ocean transportation intermediary—

- (1) is not qualified to provide intermediary services; or
- (2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER SURETY.—The Commission may revoke an ocean transportation intermediary’s license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

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| 40903 | 46 App.:1718(c). | Pub. L. 98-237, §19(c), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912. |

In subsection (a)(2), the words “lawful” and “rule” are omitted as unnecessary.

§ 40904. Compensation by common carriers

(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary’s license (if required under section 40901 of this title) and has—

- (1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of the space; and
- (2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) DUAL COMPENSATION.—A common carrier may not pay compensation for services described in subsection (a) more than once on the same shipment.

(c) BENEFICIAL INTEREST SHIPMENTS.—An ocean freight forwarder may not receive com-

penensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.

(d) LIMITS ON AUTHORITY OF CONFERENCE OR GROUP.—A conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean freight forwarder may not—

- (1) deny a member of the conference or group the right, upon notice of not more than 5 days, to take independent action on any level of compensation paid to an ocean freight forwarder; or
- (2) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under a tariff and assessed against the cargo on which the services of the ocean freight forwarder are provided.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

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| 40904 | 46 App.:1718(e). | Pub. L. 98-237, §19(e), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912. |

In this section, the words “ocean freight forwarder” are substituted for “ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix” and “ocean transportation intermediary” 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 (d)(1), the word “calendar” is omitted as unnecessary.

CHAPTER 411—PROHIBITIONS AND PENALTIES

- Sec.
- 41101. Joint ventures and consortiums.
- 41102. General prohibitions.
- 41103. Disclosure of information.
- 41104. Common carriers.
- 41105. Concerted action.
- 41105A. Authority.
- 41106. Marine terminal operators.
- 41107. Monetary penalties.¹
- 41108. Additional penalties.
- 41109. Assessment of penalties.
- 41110. Data collection.

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-146, §9(c), June 16, 2022, 136 Stat. 1277, added item 41110.

2018—Pub. L. 115-282, title VII, §709(b)(2), Dec. 4, 2018, 132 Stat. 4296, added item 41105A.

§ 41101. Joint ventures and consortiums

In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

¹ Section catchline amended by Pub. L. 117-146 without corresponding amendment of chapter analysis.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1540.)

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| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 41101 | 46 App.:1709(e). | Pub. L. 98–237, §10(e), Mar. 20, 1984, 98 Stat. 80. |

§ 41102. General prohibitions

(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(d) RETALIATION AND OTHER DISCRIMINATORY ACTIONS.—A common carrier, marine terminal operator, or ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not—

(1) retaliate against a shipper, an agent of a shipper, an ocean transportation intermediary, or a motor carrier by refusing, or threatening to refuse, an otherwise-available cargo space accommodation; or

(2) resort to any other unfair or unjustly discriminatory action for—

(A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has—

(i) patronized another carrier; or

(ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or

(B) any other reason.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1540; Pub. L. 117–146, §5, June 16, 2022, 136 Stat. 1273.)

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| 41102(a) | 46 App.:1709(a)(1). | Pub. L. 98–237, §10(a), Mar. 20, 1984, 98 Stat. 77. |
| 41102(b) | 46 App.:1709(a)(2), (3). | |
| 41102(c) | 46 App.:1709(d)(1). | Pub. L. 98–237, §10(d)(1), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105–258, title I, §109(c)(2), Oct. 14, 1998, 112 Stat. 1909. |

Editorial Notes

AMENDMENTS

2022—Subsec. (d). Pub. L. 117–146 added subsec. (d).

Statutory Notes and Related Subsidiaries

RULEMAKING ON DEMURRAGE OR DETENTION

Pub. L. 117–146, §7(b), June 16, 2022, 136 Stat. 1275, provided that:

“(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act [June 16, 2022], the Federal Maritime Commission shall initiate a rulemaking further defining prohibited practices by common carriers, marine terminal operators, shippers, and ocean transportation intermediaries under section 41102(c) of title 46, United States Code, regarding the assessment of demurrage or detention charges. The Federal Maritime Commission shall issue a final rule defining such practices not later than 1 year after the date of enactment of this Act.

“(2) CONTENTS.—The rule under paragraph (1) shall only seek to further clarify reasonable rules and practices related to the assessment of detention and demurrage charges to address the issues identified in the final rule published on May 18, 2020, entitled ‘Interpretive Rule on Demurrage and Detention Under the Shipping Act’ (or successor rule), including a determination of which parties may be appropriately billed for any demurrage, detention, or other similar per container charges.”

§ 41103. Disclosure of information

(a) PROHIBITION.—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

(2) may improperly disclose its business transaction to a competitor.

(b) EXCEPTIONS.—Subsection (a) does not prevent providing the information—

(1) in response to legal process;

(2) to the Federal Maritime Commission or an agency of the United States Government; or

(3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.—An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information—

(1) may give information to the conference or any person or agency designated by the conference, for the purpose of—

(A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;

(B) determining whether a member of the conference has breached the conference agreement; or