

**§ 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

section must be commenced within 5 years after the date of the violation.

(f) REVIEW OF CIVIL PENALTY.—A person against whom a civil penalty is assessed, or that is ordered to refund money, under this section may obtain review under chapter 158 of title 28.

(g) CIVIL ACTIONS TO COLLECT.—If a person does not pay an assessment of a civil penalty or a refund required under this section after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the Commission unless it finds that the order was not regularly made and duly issued.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1544; Pub. L. 117-146, §§8(a)(2), 15(b), June 16, 2022, 136 Stat. 1276, 1279.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41109(a) .....	46 App.:1712(c) (1st, last sentences).	Pub. L. 98-237, §13(c)-(f), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, §112(c), Oct. 14, 1998, 112 Stat. 1912.
41109(b) .....	46 App.:1712(c) (2d sentence).	
41109(c) .....	46 App.:1712(f)(1) (1st sentence).	
41109(d) .....	46 App.:1712(f)(1) (last sentence).	
41109(e) .....	46 App.:1712(f)(2).	
41109(f) .....	46 App.:1712(d).	
41109(g) .....	46 App.:1712(e).	

**Editorial Notes**

AMENDMENTS

2022—Subsecs. (a), (b). Pub. L. 117-146, §8(a)(2)(A), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to general authority to assess a civil penalty and factors in determining the amount of a civil penalty.

Subsec. (c). Pub. L. 117-146, §15(b), substituted “subsection (a) or (d) of section 41102 or paragraph (1) or (2) of section 41104(a)” for “section 41102(a) or 41104(1) or (2) of this title”.

Pub. L. 117-146, §8(a)(2)(B), substituted “or refund of money under subparagraph (A) or (B), respectively, of subsection (a)(1) may not be imposed” for “may not be imposed”.

Subsec. (e). Pub. L. 117-146, §8(a)(2)(C), inserted “or order a refund of money” after “penalty”.

Subsec. (f). Pub. L. 117-146, §8(a)(2)(D), inserted “, or that is ordered to refund money,” after “assessed”.

Subsec. (g). Pub. L. 117-146, §8(a)(2)(E), inserted “or a refund required under this section” after “penalty”.

**§ 41110. Data collection**

The Federal Maritime Commission shall publish on its website a calendar quarterly report that describes the total import and export tonnage and the total loaded and empty 20-foot equivalent units per vessel (making port in the United States, including any territory or possession of the United States) operated by each ocean common carrier covered under this chapter. Ocean common carriers under this chapter shall provide to the Commission all necessary information, as determined by the Commission, for completion of this report.

(Added Pub. L. 117-146, §9(a), June 16, 2022, 136 Stat. 1277.)

**Statutory Notes and Related Subsidiaries**

## RULE OF CONSTRUCTION

Pub. L. 117-146, §9(b), June 16, 2022, 136 Stat. 1277, provided that: “Nothing in this section [enacting this section], and the amendment made by this section, shall be construed to compel the public disclosure of any confidential or proprietary data, in accordance with section 552(b)(4) of title 5, United States Code.”

**CHAPTER 413—ENFORCEMENT**

Sec.	
41301.	Complaints.
41302.	Investigations.
41303.	Discovery and subpoenas.
41304.	Hearings and orders.
41305.	Award of reparations.
41306.	Injunctive relief sought by complainants.
41307.	Injunctive relief sought by the Commission.
41308.	Enforcement of subpoenas and orders.
41309.	Enforcement of reparation orders.
41310.	Charge complaints.

**Editorial Notes**

## AMENDMENTS

2022—Pub. L. 117-146, §10(b), June 16, 2022, 136 Stat. 1278, added item 41310.

**Statutory Notes and Related Subsidiaries**

## FEDERAL MARITIME COMMISSION ACTIVITIES

Pub. L. 117-146, §17, June 16, 2022, 136 Stat. 1280, provided that:

“(a) PUBLIC SUBMISSIONS TO COMMISSION.—The Federal Maritime Commission shall—

“(1) establish on the public website of the Commission a webpage that allows for the submission of comments, complaints, concerns, reports of noncompliance, requests for investigation, and requests for alternative dispute resolution; and

“(2) direct each submission under the link established under paragraph (1) to the appropriate component office of the Commission.

“(b) AUTHORIZATION OF OFFICE OF CONSUMER AFFAIRS AND DISPUTE RESOLUTION SERVICES.—The Commission shall maintain an Office of Consumer Affairs and Dispute Resolution Services to provide nonadjudicative ombuds assistance, mediation, facilitation, and arbitration to resolve challenges and disputes involving cargo shipments, household good shipments, and cruises subject to the jurisdiction of the Commission.

“(c) ENHANCING CAPACITY FOR INVESTIGATIONS.—

“(1) IN GENERAL.—Pursuant to section 41302 of title 46, United States Code, not later than 18 months after the date of enactment of this Act [June 16, 2022], the Chairperson of the Commission shall staff within the Bureau of Enforcement, the Bureau of Certification and Licensing, the Office of the Managing Director, the Office of Consumer Affairs and Dispute Resolution Services, and the Bureau of Trade Analysis not fewer than 7 total positions to assist in investigations and oversight, in addition to the positions within the Bureau of Enforcement, the Bureau of Certification and Licensing, the Office of the Managing Director, the Office of Consumer Affairs and Dispute Resolution Services, and the Bureau of Trade Analysis on that date of enactment.

“(2) DUTIES.—The additional staff appointed under paragraph (1) shall provide support—

“(A) to Area Representatives of the Bureau of Enforcement;

“(B) to attorneys of the Bureau of Enforcement in enforcing the laws and regulations subject to the jurisdiction of the Commission;

“(C) for the alternative dispute resolution services of the Commission; or

“(D) for the review of agreements and activities subject to the authority of the Commission.”

**§ 41301. Complaints**

(a) IN GENERAL.—A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

(b) NOTICE AND RESPONSE.—The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.

(c) IF COMPLAINT NOT SATISFIED.—If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1545.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41301(a) .....	46 App.:1710(a), (g) (related to time limit).	Pub. L. 98-237, §11(a), (b), (g) (related to time limit), Mar. 20, 1984, 98 Stat. 80; Pub. L. 98-595, §3(b)(2), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 105-258, title I, §110, Oct. 14, 1998, 112 Stat. 1911.
41301(b) .....	46 App.:1710(b) (1st sentence).	
41301(c) .....	46 App.:1710(b) (last sentence).	

In subsection (a), the words “If the complaint is filed within 3 years after the claim accrues” are substituted for “For any complaint filed within 3 years after the cause of action accrued” in 46 App. U.S.C. 1710(g) to alert the reader to that time limitation.

**§ 41302. Investigations**

(a) IN GENERAL.—The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct, agreement, fee, or charge that the Commission believes may be in violation of this part. The Commission may by order disapprove, cancel, or modify any agreement that operates in violation of this part.

(b) EFFECTIVENESS OF AGREEMENT, FEE, OR CHARGE DURING INVESTIGATION.—Unless an injunction is issued under section 41306 or 41307 of this title, an agreement, fee, or charge under investigation by the Commission remains in effect until the Commission issues its order.

(c) DATE FOR DECISION.—Within 10 days after the initiation of a proceeding under this section or section 41301 of this title, the Commission shall set a date by which it will issue its final decision. The Commission by order may extend the date for good cause.

(d) SANCTIONS FOR DELAY.—If, within the period for final decision under subsection (c), the Commission determines that it is unable to issue a final decision because of undue delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.

(e) REPORT.—The Commission shall make a written report of every investigation under this part in which a hearing was held, stating its conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of