

# OCEAN SHIPPING REFORM ACT OF 2022

June 13, 2022

SENATE BILL (S.3580)

## Part A—Ocean Shipping

### CHAPTER 401—GENERAL

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#### §40101. Purposes

The purposes of this part are to—

(1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) ~~ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;~~

(3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs ~~and supporting commerce~~; and

(4) ~~promote the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water in the foreign commerce of the United States, and by placing a greater reliance on the marketplace, promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.~~

#### §40102. Definitions

In this part:

(1) Agreement.—The term "agreement"—

(A) means a written or oral understanding, arrangement, or association, and any modification or cancellation thereof; but

(B) does not include a maritime labor agreement.

(2) Antitrust laws.—The term "antitrust laws" means—

(A) the Sherman Act (15 U.S.C. 1 et seq.);

(B) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8, 9);

(C) the Clayton Act (15 U.S.C. 12 et seq.);

(D) the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a);

- (E) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
- (F) the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.); and
- (G) Acts supplementary to those Acts.

(3) Assessment agreement.—The term "assessment agreement" means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent the agreement provides for the funding of collectively bargained fringe-benefit obligations on other than a uniform worker-hour basis, regardless of the cargo handled or type of vessel or equipment used.

(4) Bulk cargo.—The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(5) Certain covered services.—For purposes of sections 41105 and 41307, the term "certain covered services" means, with respect to a vessel—

- (A) the berthing or bunkering of the vessel;
- (B) the loading or unloading of cargo to or from the vessel to or from a point on a wharf or terminal;
- (C) the positioning, removal, or replacement of buoys related to the movement of the vessel; and
- (D) with respect to injunctive relief under section 41307, towing vessel services provided to such a vessel.

(6) Chemical parcel-tanker.—The term "chemical parcel-tanker" means a vessel that has—

- (A) a cargo-carrying capability consisting of individual cargo tanks for bulk chemicals that—
  - (i) are a permanent part of the vessel; and
  - (ii) have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination; and
- (B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(7) Common carrier.—The term "common carrier"—

- (A) means a person that—
  - (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;
  - (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and
  - (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; but
- (B) does not include a carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker, or by vessel when primarily engaged in the carriage of perishable agricultural commodities—
  - (i) if the carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and
  - (ii) only with respect to the carriage of those commodities.

(8) Conference.—The term "conference"—

- (A) means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to use a common tariff; but
- (B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.

(9) Controlled carrier.—The term "controlled carrier" means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if—

(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(10) Deferred rebate.—The term "deferred rebate" means a return by a common carrier of any freight money to a shipper, where the return is—

(A) consideration for the shipper giving all or any portion of its shipments to that or any other common carrier over a fixed period of time;

(B) deferred beyond the completion of the service for which it was paid; and

(C) made only if the shipper has agreed to make a further shipment with that or any other common carrier.

(11) Forest products.—The term "forest products" includes lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, and paper and paper board in rolls or in pallet or skid-sized sheets.

(12) Inland division.—The term "inland division" means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(13) Inland portion.—The term "inland portion" means the charge to the public by a common carrier for the non-ocean portion of through transportation.

(14) Loyalty contract.—The term "loyalty contract" means a contract with an ocean common carrier or agreement providing for—

(A) a shipper to obtain lower rates by committing all or a fixed portion of its cargo to that carrier or agreement; and

(B) a deferred rebate arrangement.

(15) Marine terminal operator.—The term "marine terminal operator" means a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49.

(16) Maritime labor agreement.—The term "maritime labor agreement"—

(A) means—

(i) a collective bargaining agreement between an employer subject to this part, or a group of such employers, and a labor organization representing employees in the maritime or stevedoring industry;

(ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or

(iii) an agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group; but

(B) does not include an assessment agreement.

(17) Non-vessel-operating common carrier.—The term "non-vessel-operating common carrier" means a common carrier that—

(A) does not operate the vessels by which the ocean transportation is provided; and

(B) is a shipper in its relationship with an ocean common carrier.

(18) Ocean common carrier.—The term "ocean common carrier" means a vessel-operating common carrier.

(19) Ocean freight forwarder.—The term "ocean freight forwarder" means a person that—  
(A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and  
(B) processes the documentation or performs related activities incident to those shipments.

(20) Ocean transportation intermediary.—The term "ocean transportation intermediary" means an ocean freight forwarder or a non-vessel-operating common carrier.

(21) Service contract.—The term "service contract" means a written contract, other than a bill of lading or receipt, between one or more shippers, on the one hand, and an individual ocean common carrier or an agreement between or among ocean common carriers, on the other, in which—

(A) the shipper or shippers commit to providing a certain volume or portion of cargo over a fixed time period; and

(B) the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features.

(22) Shipment.—The term "shipment" means all of the cargo carried under the terms of a single bill of lading.

(23) Shipper.—The term "shipper" means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation of cargo is provided;

(C) the person to whom delivery is to be made;

(D) a shippers' association; or

(E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(24) Shippers' association.—The term "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts.

(25) Through rate.—The term "through rate" means the single amount charged by a common carrier in connection with through transportation.

(26) Through transportation.—The term "through transportation" means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States port or point and a foreign port or point.

### **§40103. Administrative exemptions**

(a) In General.—The Federal Maritime Commission, on application or its own motion, may by order or regulation exempt for the future any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption.

(b) Opportunity for Hearing.—An order or regulation of exemption or revocation of an exemption may be issued only if the Commission has provided an opportunity for a hearing to interested persons and departments and agencies of the United States Government.

#### **§40104. Reports filed with the Commission**

(a) Reports.—

(1) In general.—The Federal Maritime Commission may require a common carrier or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee of the common carrier or marine terminal operator to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the common carrier or marine terminal operator, as applicable.

(2) Requirements.—Any report, account, record, rate, charge, or memorandum required to be filed under paragraph (1) shall—

(A) be made under oath if the Commission requires; and

(B) be filed in the form and within the time prescribed by the Commission.

(3) Limitation.—The Commission shall—

(A) limit the scope of any filing ordered under this section to fulfill the objective of the order; and

(B) provide a reasonable period of time for respondents to respond based upon their capabilities and the scope of the order.

(b) Conference Minutes.—Conference minutes required to be filed with the Commission under this section may not be released to third parties or published by the Commission.

### **CHAPTER 403—AGREEMENTS**

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#### **§40301. Application**

(a) Ocean Common Carrier Agreements.—This part applies to an agreement between or among ocean common carriers to—

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

- (3) allot ports or regulate the number and character of voyages between ports;
- (4) regulate the volume or character of cargo or passenger traffic to be carried;
- (5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;
- (6) control, regulate, or prevent competition in international ocean transportation; or
- (7) discuss and agree on any matter related to a service contract.

(b) Marine Terminal Operator Agreements.—This part applies to an agreement between or among marine terminal operators, or between or among one or more marine terminal operators and one or more ocean common carriers, to—

- (1) discuss, fix, or regulate rates or other conditions of service; or
- (2) engage in exclusive, preferential, or cooperative working arrangements, to the extent the agreement involves ocean transportation in the foreign commerce of the United States.

(c) Acquisitions.—This part does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

(d) Maritime Labor Agreements.—This part does not apply to a maritime labor agreement. However, this subsection does not exempt from this part any rate, charge, regulation, or practice of a common carrier that is required to be set forth in a tariff or is an essential term of a service contract, whether or not the rate, charge, regulation, or practice arises out of, or is otherwise related to, a maritime labor agreement.

(e) Assessment Agreements.—This part (except sections 40305 and 40307(a)) does not apply to an assessment agreement.

### **§40302. Filing requirements**

(a) In General.—A true copy of every agreement referred to in section 40301(a) or (b) of this title shall be filed with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement shall be filed.

(b) Exceptions.—Subsection (a) does not apply to—

- (1) an agreement related to transportation to be performed within or between foreign countries; or
- (2) an agreement among common carriers to establish, operate, or maintain a marine terminal in the United States.

(c) Regulations.—The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and any additional information and documents necessary to evaluate the agreement.

### **§40303. Content requirements**

(a) Ocean Common Carrier Agreements.—

(1) Restrictions.—An ocean common carrier agreement may not—

(A) prohibit or restrict a member of the agreement from engaging in negotiations for a service contract with a shipper;

(B) require a member of the agreement to disclose a negotiation on a service contract, or the terms of a service contract, other than those terms required to be published under section 40502(d) of this title; or

(C) adopt mandatory rules or requirements affecting the right of an agreement member to negotiate and enter into a service contract.

(2) Voluntary guidelines.—An ocean common carrier agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. Any guidelines adopted shall be submitted confidentially to the Federal Maritime Commission.

(b) Conference Agreements.—Each conference agreement must—

- (1) state its purpose;
- (2) provide reasonable and equal terms for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;
- (3) permit any member to withdraw from conference membership on reasonable notice without penalty;
- (4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;
- (5) prohibit the conference from engaging in conduct prohibited by section 41105(1) or (3) of this title;
- (6) provide for a consultation process designed to promote—
  - (A) commercial resolution of disputes; and
  - (B) cooperation with shippers in preventing and eliminating malpractices;
- (7) establish procedures for promptly and fairly considering requests and complaints of shippers; and
- (8) provide that—
  - (A) any member of the conference may take independent action on a rate or service item on not more than 5 days' notice to the conference; and
  - (B) except for an exempt commodity not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

(c) Interconference Agreements.—Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

(d) Vessel Sharing Agreements.—

- (1) In general.—An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a liner vessel documented under section 12103 or 12111(c) of this title may agree with an ocean common carrier described in paragraph (2) to which it charters or subcharterers the vessel or space on the vessel that the charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for vessels of the United States.
- (2) Carrier described.—An ocean common carrier described in this paragraph is one that is not the owner, operator, or bareboat charterer for at least one year of liner vessels of the United States that are eligible to be included in the Maritime Security Fleet Program and are enrolled in an Emergency Preparedness Program under chapter 531 of this title.

#### **§40304. Commission action**

(a) Notice of Filing.—Not later than 7 days after the date an agreement is filed, the Federal Maritime Commission shall—

- (1) transmit a notice of the filing to the Federal Register for publication; and
- (2) request interested persons to submit relevant information and documents.

(b) Preliminary Review and Rejection.—After preliminary review, the Commission shall reject an agreement that it finds does not meet the requirements of sections 40302 and 40303 of this title. The Commission shall notify in writing the person filing the agreement of the reason for rejection.

(c) Review and Effective Date.—Unless rejected under subsection (b), an agreement (other than an assessment agreement) is effective—

(1) on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever is later; or

(2) if additional information or documents are requested under subsection (d)—

(A) on the 45th day after the Commission receives all the additional information and documents; or

(B) if the request is not fully complied with, on the 45th day after the Commission receives the information and documents submitted and a statement of the reasons for noncompliance with the request.

(d) Request for Additional Information.—Before the expiration of the period specified in subsection (c)(1), the Commission may request from the person filing the agreement any additional information and documents the Commission considers necessary to make the determinations required by this part.

(e) Modification of Review Period.—

(1) Shortening.—On request of the party filing an agreement, the Commission may shorten a period specified in subsection (c), but not to a date that is less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(2) Extension.—The period specified in subsection (c)(2) may be extended only by the United States District Court for the District of Columbia in a civil action brought by the Commission under section 41307(c) of this title.

(f) Fixed Terms.—The Commission may not limit the effectiveness of an agreement to a fixed term.

#### **§40305. Assessment agreements**

(a) Filing Requirement.—An assessment agreement shall be filed with the Federal Maritime Commission and is effective on filing.

(b) Complaints.—If a complaint is filed with the Commission within 2 years after the date of an assessment agreement, the Commission shall disapprove, cancel, or modify the agreement, or an assessment or charge pursuant to the agreement, that the Commission finds, after notice and opportunity for a hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The Commission shall issue its final decision in the proceeding within one year after the date the complaint is filed.

(c) Adjustments of Assessments and Charges.—To the extent that the Commission finds under subsection (b) that an assessment or charge is unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall adjust the assessment or charge for the period between the filing of the complaint and the final decision by awarding prospective credits or debits to future assessments and charges. However, if the complainant has ceased activities subject to the assessment or charge, the Commission may award reparations.

#### **§40306. Nondisclosure of information**

Information and documents (other than an agreement) filed with the Federal Maritime Commission under this chapter are exempt from disclosure under section 552 of title 5 and may not be made public except as may be relevant to an administrative or judicial proceeding. This section does not prevent disclosure to either House of Congress or to a duly authorized committee or subcommittee of Congress.



### §40307. Exemption from antitrust laws

(a) In General.—The antitrust laws do not apply to—

(1) an agreement (including an assessment agreement) that has been filed and is effective under this chapter;

(2) an agreement that is exempt under section 40103 of this title from any requirement of this part;

(3) an agreement or activity within the scope of this part, whether permitted under or prohibited by this part, undertaken or entered into with a reasonable basis to conclude that it is—

(A) pursuant to an agreement on file with the Federal Maritime Commission and in effect when the activity takes place; or

(B) exempt under section 40103 of this title from any filing or publication requirement of this part;

(4) an agreement or activity relating to transportation services within or between foreign countries, whether or not via the United States, unless the agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(5) an agreement or activity relating to the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(6) an agreement or activity to provide wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(7) an agreement, modification, or cancellation approved before June 18, 1984, by the Commission under section 15 of the Shipping Act, 1916, or permitted under section 14b of that Act, and any properly published tariff, rate, fare, or charge, or classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) Exceptions.—This part does not extend antitrust immunity to—

(1) an agreement with or among air carriers, rail carriers, motor carriers, tug operators, or common carriers by water not subject to this part relating to transportation within the United States;

(2) a discussion or agreement among common carriers subject to this part relating to the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) an agreement among common carriers subject to this part to establish, operate, or maintain a marine terminal in the United States; or

(4) a loyalty contract.

(c) Retroactive Effect of Determinations.—A determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws under subsection (a) does not remove or alter the antitrust immunity for the period before the determination.

(d) Relief Under Clayton Act.—A person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by this part.

## CHAPTER 405—TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS

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### **§40501. General rate and tariff requirements**

(a) Automated Tariff System.—

(1) In general.—Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, a common carrier is not required to state separately or otherwise reveal in tariffs the inland divisions of a through rate.

(2) Exceptions.—Paragraph (1) does not apply with respect to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(b) Contents of Tariffs.—A tariff under subsection (a) shall—

(1) state the places between which cargo will be carried;

(2) list each classification of cargo in use;

(3) state the level of compensation, if any, of any ocean freight forwarder by a carrier or conference;

(4) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules that in any way change, affect, or determine any part or the total of the rates or charges;

(5) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

(6) include copies of any loyalty contract, omitting the shipper's name.

(c) Electronic Access.—A tariff under subsection (a) shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations. A reasonable fee may be charged for such access, except that no fee may be charged for access by a Federal agency.

(d) Time-Volume Rates.—A rate contained in a tariff under subsection (a) may vary with the volume of cargo offered over a specified period of time.

(e) Effective Dates.—

(1) Increases.—A new or initial rate or change in an existing rate that results in an increased cost to a shipper may not become effective earlier than 30 days after publication. However, for good cause, the Federal Maritime Commission may allow the rate to become effective sooner.

(2) Decreases.—A change in an existing rate that results in a decreased cost to a shipper may become effective on publication.

(f) Marine Terminal Operator Schedules.—A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

(g) Regulations.—

(1) In general.—The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission, after periodic review, may prohibit the use of any automated tariff system that fails to meet the requirements established under this section.

(2) Remote terminals.—The Commission may not require a common carrier to provide a remote terminal for electronic access under subsection (c).

(3) Marine terminal operator schedules.—The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

### §40502. Service contracts

(a) In General.—An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this part.

(b) Filing Requirements.—

(1) In general.—Each service contract entered into under this section by an individual ocean common carrier or an agreement shall be filed confidentially with the Federal Maritime Commission.

(2) Exceptions.—Paragraph (1) does not apply to contracts regarding bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(c) Essential Terms.—Each service contract shall include—

- (1) the origin and destination port ranges;
- (2) the origin and destination geographic areas in the case of through intermodal movements;
- (3) the commodities involved;
- (4) the minimum volume or portion;
- (5) the line-haul rate;
- (6) the duration;
- (7) service commitments; **and**
- (8) the liquidated damages for nonperformance, if any; **and**

(9) any other essential terms that the Federal Maritime Commission determines necessary or appropriate through a rulemaking process.

(d) Publication of Certain Terms.—When a service contract is filed confidentially with the Commission, a concise statement of the essential terms specified in paragraphs (1), (3), (4), and (6) of subsection (c) shall be published and made available to the general public in tariff format.

(e) Disclosure of Certain Terms.—

(1) Definitions.—In this subsection, the terms "dock area" and "within the port area" have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

(2) Disclosure.—An ocean common carrier that is a party to or is otherwise subject to a collective bargaining agreement with a labor organization shall, in response to a written request by the labor organization, state whether it is responsible for the following work at a dock area or within a port area in the United States with respect to cargo transportation under a service contract:

(A) The movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area.

(B) The assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area.

(C) The assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to the container yard.

(D) The assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(3) Within reasonable time.—The common carrier shall provide the information described in paragraph (2) to the requesting labor organization within a reasonable period of time.

(4) Existence of collective bargaining agreement.—This subsection does not require the disclosure of information by an ocean common carrier unless there exists an applicable and otherwise lawful collective bargaining agreement pertaining to that carrier. A disclosure by an ocean common carrier may not be deemed an admission or an agreement that any work is covered by a collective bargaining agreement. A dispute about whether any work is covered by a collective bargaining agreement and the responsibility of an ocean common carrier under a collective bargaining agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act (29 U.S.C. 151 et seq.), and without reference to this subsection.

(5) Effect under other laws.—This subsection does not affect the lawfulness or unlawfulness under this part or any other Federal or State law of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract.

(f) Remedy for Breach.—Unless the parties agree otherwise, the exclusive remedy for a breach of a service contract is an action in an appropriate court. The contract dispute resolution forum may not be controlled by or in any way affiliated with a controlled carrier or by the government that owns or controls the carrier.

### §40503. Refunds and waivers

The Federal Maritime Commission, on application of a carrier or shipper, may permit a common carrier or conference to refund a portion of the freight charges collected from a shipper, or to waive collection of a portion of the charges from a shipper, if—

(1) there is an error in a tariff, a failure to publish a new tariff, or an error in quoting a tariff, and the refund or waiver will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference, before filing an application for authority to refund or waive any charges for an error in a tariff or a failure to publish a tariff, has published a new tariff setting forth the rate on which the refund or waiver would be based; and

(3) the application for the refund or waiver is filed with the Commission within 180 days from the date of shipment.

### §40504. Shipping exchange registry.

(a) In General. – No person may operate a shipping exchange involving ocean transportation in the foreign commerce of the United States unless the shipping exchange is registered as a national shipping exchange under the terms and conditions provided in this section and the regulations issued pursuant to this section.

(b) Registration. – A person shall register a shipping exchange by filing with the Federal Maritime Commission an application for registration in such form as the Commission, by rule, may prescribe, containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate to complete a shipping exchange’s registration.

(c) Exemption. – The Commission may exempt, conditionally or unconditionally, a shipping exchange from registration under this section if the Commission finds that the shipping exchange is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in a foreign country where the shipping exchange is headquartered.

**Commented [Venable1]:** *Applicability.* – The registration requirement under section 40504 of title 46, United States Code (as added by subsection (a)), shall take effect on the date on which the FMC states the rule is effective in the regulations issued under such section.

(d) Regulations. – Not later than 3 years after the date of enactment of the Ocean Shipping Reform Act of 2022, the Commission shall issue regulations pursuant to subsection (a), which shall set standards necessary to carry out subtitle IV of this title for registered national shipping exchanges. For consideration of a service contract entered into by a shipping exchange, the Commission shall be limited to the minimum essential terms for service contracts established under section 40502 of this title.

(e) Definition of Shipping Exchange. – In this section, the term ‘shipping exchange’ means a platform (digital, over-the-counter, or otherwise) that connects shippers with common carriers for the purpose of entering into underlying agreements or contracts for the transport of cargo, by vessel or other modes of transportation.

## **CHAPTER 407—CONTROLLED CARRIERS**

Sec.

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### **§40701. Rates**

(a) In General.—A controlled carrier may not—

(1) maintain a rate or charge in a tariff or service contract, or charge or assess a rate, that is below a just and reasonable level; or

(2) establish, maintain, or enforce in a tariff or service contract a classification, rule, or regulation that results, or is likely to result, in the carriage or handling of cargo at a rate or charge that is below a just and reasonable level.

(b) Commission Prohibition.—The Federal Maritime Commission, at any time after notice and opportunity for a hearing, may prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable.

(c) Burden of Proof.—In a proceeding under this section, the burden of proof is on the controlled carrier to demonstrate that its rate, charge, classification, rule, or regulation is just and reasonable.

(d) Voidness.—A rate, charge, classification, rule, or regulation that has been suspended or prohibited by the Commission is void and its use is unlawful.

### **§40702. Rate standards**

(a) Definition.—In this section, the term "constructive costs" means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(b) Standards.—In determining whether a rate, charge, classification, rule, or regulation of a controlled carrier is just and reasonable, the Federal Maritime Commission—

(1) shall take into account whether the rate or charge that has been published or assessed, or that would result from the pertinent classification, rule, or regulation, is below a level that is fully compensatory to the controlled carrier based on the carrier's actual costs or constructive costs; and

(2) may take into account other appropriate factors, including whether the rate, charge, classification, rule, or regulation is—

(A) the same as, or similar to, those published or assessed by other carriers in the same trade;

(B) required to ensure movement of particular cargo in the same trade; or

(C) required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

#### **§40703. Effective date of rates**

Notwithstanding section 40501(e) of this title and except for service contracts, a rate, charge, classification, rule, or regulation of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication.

#### **§40704. Commission review**

(a) Request for Justification.—On request of the Federal Maritime Commission, a controlled carrier shall file with the Commission, within 20 days of the request, a statement of justification that sufficiently details the carrier's need and purpose for an existing or proposed rate, charge, classification, rule, or regulation and upon which the Commission may reasonably base a determination of its lawfulness.

(b) Determination.—Within 120 days after receipt of information requested under subsection (a), the Commission shall determine whether the rate, charge, classification, rule, or regulation may be unjust and unreasonable.

(c) Show Cause Order.—Whenever the Commission is of the opinion that a rate, charge, classification, rule, or regulation published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why the rate, charge, classification, rule, or regulation should not be prohibited.

(d) Suspension Pending Determination.—

(1) Not yet effective.—Pending a determination of the lawfulness of a rate, charge, classification, rule, or regulation in a proceeding under subsection (c), the Commission may suspend the rate, charge, classification, rule, or regulation at any time before its effective date.

(2) Already effective.—If a rate, charge, classification, rule, or regulation has already become effective, the Commission, on issuance of an order to show cause, may suspend the rate, charge, classification, rule, or regulation on at least 30 days' notice to the controlled carrier.

(3) Maximum suspension.—A period of suspension under this subsection may not exceed 180 days.

(e) Replacement During Suspension.—Whenever the Commission has suspended a rate, charge, classification, rule, or regulation under this section, the controlled carrier may publish a new rate, charge, classification, rule, or regulation to take effect immediately during the suspension in lieu of the suspended rate, charge, classification, rule, or regulation. However, the Commission may reject the new rate, charge, classification, rule, or regulation if the Commission believes it is unjust and unreasonable.

### **§40705. Presidential review of Commission orders**

(a) Transmission to President.—The Federal Maritime Commission shall transmit to the President, concurrently with publication thereof, each order of suspension or final order of prohibition issued under section 40704 of this title.

(b) Presidential Request and Commission Action.—Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a), the President, in writing, may request the Commission to stay the effect of the order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission shall immediately grant the request by issuing an order in which the President's request shall be described. During a stay, the President shall, whenever practicable, attempt to resolve the matter by negotiating with representatives of the applicable foreign governments.

### **§40706. Exceptions**

This chapter does not apply to—

- (1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or
- (2) a trade served only by controlled carriers.

## **CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES**

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40901.

License requirement.

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Financial responsibility.

40903.

Suspension or revocation of license.

40904.

Compensation by common carriers.

### **§40901. License requirement**

(a) In General.—A person in the United States may not advertise, hold oneself out, or act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) Exception.—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license.

(c) Applicability.—Subsection (a) and section 40902 do not apply to a person that performs ocean transportation intermediary services on behalf of an ocean transportation intermediary for which it is a disclosed agent.

### **§40902. Financial responsibility**

(a) In General.—A person may not advertise, hold oneself out, or act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety—

(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

(2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Scope of Financial Responsibility.—A bond, insurance, or other surety obtained under this section—

(1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title;

(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) Regulations on Court Judgments.—The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(d) Resident Agent.—An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

### **§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.

### **§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 compensation 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.

## CHAPTER 411—PROHIBITIONS AND PENALTIES

Sec.

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### §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.

### §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.

### §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

(C) compiling statistics of cargo movement; and

(2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

#### **§41104. Common carriers**

(a) In General.—A common carrier, either alone or in conjunction with any other person, directly or indirectly, ~~shall may~~ 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) ~~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; 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 ~~in the matter of rates or charges 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

#### **Commented [Venable2]: RULEMAKING ON DEMURRAGE OR DETENTION**

*In General* – Not later than 45 days after the date of enactment of this Act, the FMC 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 FMC shall issue a final rule defining such practices not later than 1 year after the date of enactment of this Act.

*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.

#### **RULEMAKING ON UNFAIR OR UNJUSTLY DISCRIMINATORY METHODS**

Not later than 60 days after the date of enactment of this Act, the FMC 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 FMC shall issue a final rule not later than 1 year after the date of enactment of this Act.

#### **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 FMC, in consultation with the Commandant of the US 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 FMC shall issue a final rule not later than 6 months after the date of enactment of this Act.

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; ~~or~~

(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 rule 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.

### **§41105. Concerted action**

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

- (1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;
- (2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;
- (3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;
- (4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;
- (5) negotiate with a tug or towing vessel service provider on any matter relating to rates or services provided within the United States by those tugs or towing vessels;
- (6) with respect to a vessel operated by an ocean common carrier within the United States, negotiate for the purchase of certain covered services, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;
- (7) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;
- (8) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as—
  - (A) authorized by section 40303(d) of this title;
  - (B) required by the law of the United States or the importing or exporting country; or
  - (C) agreed to by a shipper in a service contract;
- (9) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary; or
- (10) 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 locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary.

### §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.](#))

### §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.

### §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 liable 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 refunds 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.

### §41108. Additional penalties

(a) Suspension of Tariffs.—For a violation of section ~~41104(1), (2), or (7)~~ paragraph (1), (2), or (7) of section 41104(a)<sup>1</sup> 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 required 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.

#### §41109. Assessment of penalties

~~(a) General Authority. — Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.~~

~~(b) Factors in Determining Amount. — In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.~~

~~(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

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(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 ~~may not be imposed 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~~~~section 41102(a) or 41104(1) or (2)~~<sup>1</sup> of this title or to defraud the Commission by concealing such a violation.

**Commented [V3]:** NB: Section 15 of the OSRA 2022 bill instructs us to change the sections referenced, but Section 8 of the bill instructs us to remove the subsection entirely.

(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.

#### **§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.

**Commented [Venable4]:** NB: Nothing in 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.

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Charge Complaints.

### **§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.

### **§41302. Investigations**

(a) In General.—The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct ~~or agreement~~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

**Commented [V5]: NB:**

(b) Report. – The Federal Maritime Commission shall publish on a publicly available website of the Commission a report containing the results of the investigation entitled “Fact Finding No. 29, International Ocean Transportation Supply Chain Engagement.”

provide a copy of the report to all parties and publish the report for public information. A published report is competent evidence in a court of the United States.

### §41303. Discovery and subpoenas

(a) In General.—In an investigation or adjudicatory proceeding under this part—  
(1) the Federal Maritime Commission may subpoena witnesses and evidence; and  
(2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(b) Witness Fees.—Unless otherwise prohibited by law, a witness is entitled to the same fees and mileage as in the courts of the United States.

### §41304. Hearings and orders

(a) Opportunity for Hearing.—The Federal Maritime Commission shall provide an opportunity for a hearing before issuing an order relating to a violation of this part or a regulation prescribed under this part.

(b) Modification of Order.—The Commission may reverse, suspend, or modify any of its orders.

(c) Rehearing.—On application of a party to a proceeding, the Commission may grant a rehearing of the same or any matter determined in the proceeding. Except by order of the Commission, a rehearing does not operate as a stay of an order.

(d) Period of Effectiveness.—An order of the Commission remains in effect for the period specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

### §41305. Award of reparations

(a) Definition.—In this section, the term "actual injury" includes the loss of interest at commercial rates compounded from the date of injury.

(b) Basic Amount.—If the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part.

(c) Additional Amounts.—On a showing that the injury was caused by an activity prohibited by ~~subsection (b) or (c) of section 41102, section 41102(b), 41104(3) or (6), or 41105(1) or (3) of this title, paragraph (3) or (6) of section 41104(a), or paragraph (1) or (3) of section 41105~~, the Commission may order the payment of additional amounts, but the total recovery of a complainant may not exceed twice the amount of the actual injury.

(d) Difference Between Rates.—If the injury was caused by an activity prohibited by ~~section 41104(4)(A) or (B) of this title, subparagraph (A) or (B) of section 41104(a)(4)~~, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

(e) Attorney Fees.—In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.

### **§41306. Injunctive relief sought by complainants**

(a) In General.—After filing a complaint with the Federal Maritime Commission under section 41301 of this title, the complainant may bring a civil action in a district court of the United States to enjoin conduct in violation of this part.

(b) Venue.—The action must be brought in the judicial district in which—

- (1) the Commission has brought a civil action against the defendant under section 41307(a) of this title;
- or
- (2) the defendant resides or transacts business, if the Commission has not brought such an action.

(c) Remedies by Court.—After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the complaint.

(d) Attorney Fees.—A defendant prevailing in a civil action under this section shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

### **§41307. Injunctive relief sought by the Commission**

(a) General Violations.—In connection with an investigation under section 41301 or 41302 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or transacts business. After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation.

(b) Reduction in Competition.—

(1) Action by commission.—If, at any time after the filing or effective date of an agreement under chapter 403 of this title, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or to substantially lessen competition in the purchasing of certain covered services, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission's sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

(2) Remedies by court.—In an action under this subsection, the court may issue—

- (A) a temporary restraining order or a preliminary injunction; and
- (B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

(3) Burden of proof and third parties.—In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

(4) Competition factors.—In making a determination under this subsection regarding whether an agreement is likely to substantially lessen competition in the purchasing of certain covered services, the Commission may consider any relevant competition factors in affected markets, including, without limitation, the competitive effect of agreements other than the agreement under review.

(c) Failure To Provide Information.—If a person filing an agreement, or an officer, director, partner, agent, or employee of the person, fails substantially to comply with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the

Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court—

- (1) may order compliance;
- (2) shall extend the period specified in section 40304(c)(2) of this title until there has been substantial compliance; and
- (3) may grant other equitable relief that the court decides is appropriate.

(d) Representation.—The Commission may represent itself in a proceeding under this section in—

- (1) a district court of the United States, on notice to the Attorney General; and
- (2) a court of appeals of the United States, with the approval of the Attorney General.

### **§41308. Enforcement of subpoenas and orders**

(a) Civil Action.—If a person does not comply with a subpoena or order of the Federal Maritime Commission, the Attorney General, at the request of the Commission, or an injured party, may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the subpoena or order was regularly made and duly issued, the court shall enforce the subpoena or order.

(b) Time Limit on Bringing Actions.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

### **§41309. Enforcement of reparation orders**

(a) Civil Action.—If a person does not comply with an order of the Federal Maritime Commission for the payment of ~~reparation, the person to whom the award was made~~ a refund of money or reparation, the person to which the refund or reparation was awarded may seek enforcement of the order in a district court of the United States having jurisdiction over the parties.

(b) Parties and Service of Process.—All parties in whose favor the Commission has ~~made an award of reparation~~ ordered a refund of money or any other award of reparation by a single order may be joined as plaintiffs, and all other parties in the order (except for the Commission or any component of the Commission) may be joined as defendants, in a single action in a judicial district in which any one plaintiff could maintain an action against any one defendant. Service of process against a defendant not found in that district may be made in a district in which any office of that defendant is located or in which any port of call on a regular route operated by that defendant is located. Judgment may be entered for any plaintiff against the defendant liable to that plaintiff.

(c) Nature of Review.—In an action under this section, the findings and order of the Commission are prima facie evidence of the facts stated in the findings and order.

(d) Costs and Attorney Fees.—The plaintiff is not liable for costs of the action or for costs of any subsequent stage of the proceedings unless they accrue on the plaintiff's appeal. A prevailing plaintiff shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

(e) Time Limit on Bringing Actions.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

### **§41310. Charge complaints**

(a) In General.—A person may submit to the Federal Maritime Commission, and the Commission shall accept, information concerning complaints about charges assessed by a common carrier. The information submitted to the Commission shall include the bill of lading numbers and invoices, and may include any other relevant information.

(b) Investigation. — Upon receipt of a submission under subsection (a), with respect to a charge assessed by a common carrier, the Commission shall promptly investigate the charge with regard to compliance with section 41104(a) and section 41102. The common carrier shall —

(1) be provided an opportunity to submit additional information related to the charge in question;  
and

(2) bear the burden of establishing the reasonableness of any demurrage or detention charges pursuant to section 545.5 of title 46, Code of Federal Regulations (or successor regulations).

(c) Refund. — Upon receipt of submissions under subsection (a), if the Commission determines that a charge does not comply with section 41104(a) or 41102, the Commission shall promptly order the refund of charges paid.

(d) Penalties. — In the event of a finding that a charge does not comply with section 41104(a) or 41102 after submission under subsection (a), a civil penalty under section 41107 shall be applied to the common carrier making such charge.

(e) Considerations. — If the common carrier assessing the charge is acting in the capacity of a non-vessel operating common carrier, the Commission shall, while conducting an investigation under subsection (b), consider —

(1) whether the non-vessel-operating common carrier is responsible for the noncompliant assessment of the charge, in whole or in part; and

(2) whether another party is ultimately responsible in whole or in part and potentially subject to action under subsections (c) and (d).

**[OSRA 2022 does not propose amendments to Parts B and C. Therefore, those parts have been omitted.]**

## **Part D—Federal Maritime Commission**

### **CHAPTER 461—FEDERAL MARITIME COMMISSION**

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### **§46101. General organization**

(a) Organization.—The Federal Maritime Commission is an independent establishment of the United States Government.

(b) Commissioners.—

(1) Composition.—The Commission is composed of 5 Commissioners, appointed by the President by and with the advice and consent of the Senate. Not more than 3 Commissioners may be appointed from the same political party.

(2) Terms.—The term of each Commissioner is 5 years. When the term of a Commissioner ends, the Commissioner may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. Except as provided in paragraph (3), no individual may serve more than 2 terms.

(3) Vacancies.—A vacancy shall be filled in the same manner as the original appointment. An individual appointed to fill a vacancy is appointed only for the unexpired term of the individual being succeeded. An individual appointed to fill a vacancy may serve 2 terms in addition to the remainder of the term for which the predecessor of that individual was appointed.

(4) Conflicts of interest.—

(A) Limitation on relationships with regulated entities.—A Commissioner may not have a pecuniary interest in, hold an official relation to, or own stocks or bonds of any entity the Commission regulates under chapter 401 of this title.

(B) Limitation on other activities.—A Commissioner may not engage in another business, vocation, or employment.

(5) Removal.—The President may remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office.

(c) Chairman.—

(1) Designation.—The President shall designate one of the Commissioners as Chairman.

(2) General authority.—The Chairman is the chief executive and administrative officer of the Commission. In carrying out the duties and powers of the Commission (other than under paragraph (3)), the Chairman is subject to the policies, regulatory decisions, findings, and determinations of the Commission.

(3) Particular duties.—

(A) In general.—The Chairman shall—

(i) appoint and supervise officers and employees of the Commission;

(ii) appoint the heads of major organizational units (with such appointments subject to the approval of the Commission);

(iii) distribute the business of the Commission among personnel and organizational units;

(iv) supervise the expenditure of money for administrative purposes;

(v) assign Commission personnel, including Commissioners, to perform duties and powers delegated by the Commission under section 46104 of this title; and

(vi) prepare and submit to the President and the Congress requests for appropriations for the Commission (with such requests subject to the approval of the Commission).\*

(B) Nonapplication.—Subparagraph (A) (other than clause (v)) does not apply to personnel employed regularly and full-time in the offices of Commissioners other than the Chairman.

(4) Delegation.—The Chairman may designate officers and employees under the Chairman's jurisdiction to perform duties and powers of the Chairman, subject to the Chairman's supervision and direction.

(d) Seal.—The Commission shall have a seal which shall be judicially recognized.

### **§46102. Quorum**

A vacancy or vacancies in the membership of the Federal Maritime Commission do not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the Commissioners serving on the Commission is required to dispose of any matter before the Commission.

### **§46103. Meetings**

(a) In General.—The Federal Maritime Commission shall be deemed to be an agency for purposes of section 552b of title 5.

(b) Record.—The Commission, through its secretary, shall keep a record of its meetings and the votes taken on any action, order, contract, or financial transaction of the Commission.

(c) Nonpublic Collaborative Discussions.—

(1) In general.—Notwithstanding section 552b of title 5, a majority of the Commissioners may hold a meeting that is not open to public observation to discuss official agency business if—

- (A) no formal or informal vote or other official agency action is taken at the meeting;
- (B) each individual present at the meeting is a Commissioner or an employee of the Commission;
- (C) at least 1 Commissioner from each political party is present at the meeting, if applicable; and
- (D) the General Counsel of the Commission is present at the meeting.

(2) Disclosure of nonpublic collaborative discussions.—Except as provided under paragraph (3), not later than 2 business days after the conclusion of a meeting under paragraph (1), the Commission shall make available to the public, in a place easily accessible to the public—

- (A) a list of the individuals present at the meeting; and
- (B) a summary of the matters discussed at the meeting, except for any matters the Commission properly determines may be withheld from the public under section 552b(c) of title 5.

(3) Exception.—If the Commission properly determines matters may be withheld from the public under section 552b(c) of title 5, the Commission shall provide a summary with as much general information as possible on those matters withheld from the public.

(4) Ongoing proceedings.—If a meeting under paragraph (1) directly relates to an ongoing proceeding before the Commission, the Commission shall make the disclosure under paragraph (2) on the date of the final Commission decision.

(5) Preservation of open meetings requirements for agency action.—Nothing in this subsection may be construed to limit the applicability of section 552b of title 5 with respect to a meeting of the Commissioners other than that described in this subsection.

(6) Statutory construction.—Nothing in this subsection may be construed—

- (A) to limit the applicability of section 552b of title 5 with respect to any information which is proposed to be withheld from the public under paragraph (2)(B) of this subsection; or
- (B) to authorize the Commission to withhold from any individual any record that is accessible to that individual under section 552a of title 5.

#### **§46104. Delegation of authority**

(a) Delegation.—The Federal Maritime Commission, by published order or regulation, may delegate to a division of the Commission, an individual Commissioner, an employee board, or an officer or employee of the Commission, any of its duties or powers, including those relating to hearing, determining, ordering, certifying, reporting, or otherwise acting on any matter. This subsection does not affect section 556(b) of title 5.

(b) Review.—The Commission may review any action taken under a delegation of authority under subsection (a). The review may be taken on the Commission's own initiative or on the petition of a party to or an intervenor in the action, within the time and in the manner prescribed by the Commission. The vote of a majority of the Commission, less one member, is sufficient to bring an action before the Commission for review.

(c) Deemed Action of Commission.—If the Commission declines review, or if review is not sought, within the time prescribed under subsection (b), the action taken under the delegation of authority is deemed to be the action of the Commission.

#### **§46105. Regulations**

(a) In General.—The Federal Maritime Commission may prescribe regulations to carry out its duties and powers.

(b) Transparency.—

(1) In general.—In conjunction with the transmittal by the President to the Congress of the Budget of the United States for fiscal year 2021 and biennially thereafter, the Federal Maritime Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives reports that describe the Commission's progress toward addressing the issues raised in each unfinished regulatory proceeding, regardless of whether the proceeding is subject to a statutory or regulatory deadline.

(2) Format of reports.—Each report under paragraph (1) shall, among other things, clearly identify for each unfinished regulatory proceeding—

- (A) the popular title;
- (B) the current stage of the proceeding;
- (C) an abstract of the proceeding;
- (D) what prompted the action in question;
- (E) any applicable statutory, regulatory, or judicial deadline;
- (F) the associated docket number;
- (G) the date the rulemaking was initiated;
- (H) a date for the next action; and
- (I) if a date for the next action identified in the previous report is not met, the reason for the delay.

#### **§46106. Annual report**

(a) In General.—Not later than April 1 of each year, the Federal Maritime Commission shall submit a report to Congress. The report shall include the results of its investigations, a summary of its transactions, the purposes for which all of its expenditures were made, and any recommendations for legislation.

(b) Report on Foreign Laws and Practices.—The Commission shall include in its annual report to Congress—



(1) a list of the 20 foreign countries that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in section 42302(a) of this title being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset those conditions;

(4) any recommendations for additional legislation to offset those conditions;

(5) a list of petitions filed under section 42302(b) of this title that the Commission rejected and the reasons for each rejection; ~~and~~

(6) an analysis of the impacts on competition for the purchase of certain covered services by alliances of ocean common carriers acting pursuant to an agreement under this part<sup>1</sup> between or among ocean common carriers, including a summary of actions, including corrective actions, taken by the Commission to promote such competition.

(7) an identification of any otherwise concerning practices by ocean common carriers, particularly such carriers that are controlled carriers, that are –

(A) State-owned or State-controlled enterprises; or

(B) owned or controlled by, a subsidiary of, or otherwise related legally or financially (other than a minority relationship or investment) to a corporation based in a country –

(i) identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this paragraph;

(ii) identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a priority foreign country under subsection (a)(2) of that section; or

(iii) subject to monitoring by the United States Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

(c) Definition of Certain Covered Services.—In this section, the term "certain covered services" has the meaning given the term in section 40102.

(d) Public Disclosures. – The Federal Maritime Commission shall publish, and annually update, on the website of the Commission –

(1) all findings by the Commission of false detention and demurrage invoice information by common carriers under section 41104(a)(15) of this title; and

(2) all penalties imposed or assessed against common carriers, as applicable, under sections 41107, 41108, and 41109, listed by each common carrier.