

## **CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN FOREIGN TRADE**

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### **§ 42101. Regulations of the Commission**

(a) UNFAVORABLE CONDITIONS.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall prescribe regulations affecting shipping in foreign trade, not in conflict with law, to adjust or meet general or special conditions unfavorable to shipping in foreign trade, whether in a particular trade or on a particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transportation systems, and which arise out of or result from laws or regulations of a foreign country or competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country.

(b) INITIATION OF REGULATION.—A regulation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

### **§ 42102. Regulations of other agencies**

(a) REQUEST TO AGENCY.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall request the head of a department, agency, or instrumentality of the United States Government to suspend, modify, or annul any existing regulations, or to make new regulations, affecting shipping in the foreign trade, except regulations relating to the Public Health Service, the Consular Service, or the inspection of vessels.

(b) PRIOR REVIEW AND APPROVAL.—A department, agency, or instrumentality of the Government may not prescribe a regulation affecting shipping in the foreign trade (except a regulation affecting the Public Health Service, the Consular Service, or the inspection of vessels) until the regulation has been submitted to the Commission for its approval and final action has been taken by the Commission or the President.

(c) **SUBMISSION TO PRESIDENT.**—If the head of a department, agency, or instrumentality of the Government refuses to comply with a request under subsection (a) or objects to a decision of the Commission under subsection (b), the Commission or the head of the department, agency, or instrumentality may submit the facts to the President. The President may establish, suspend, modify, or annul the regulation.

#### **§ 42103. No preference to Government-owned vessels**

A regulation may not give a vessel owned by the United States Government a preference over a vessel owned by citizens of the United States and documented under the laws of the United States.

#### **§ 42104. Information, witnesses, and evidence**

(a) **ORDER TO SUPPLY INFORMATION.**—In carrying out section 42101 of this title, the Federal Maritime Commission may order any person (including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information the Commission considers necessary or appropriate. The Commission may require the response to any such order to be made under oath. The response shall be provided in the form and within the time specified by the Commission.

(b) **SUBPOENAS AND DISCOVERY.**—In carrying out section 42101 of this title, the Commission may—

- (1) subpoena witnesses and evidence; and
- (2) authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(c) **WITNESS FEES.**—Unless otherwise prohibited by law, and subject to funds being appropriated, a witness in a proceeding under section 42101 of this title is entitled to the same fees and mileage as in the courts of the United States.

(d) **PENALTIES.**—For failure to supply information ordered to be produced or compelled by subpoena under this section, the Commission may—

- (1) after notice and opportunity for a hearing, suspend tariffs and service contracts of a common carrier or the common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member; or
- (2) assess a civil penalty of not more than \$5,000 for each day that the information is not provided.

(e) **ENFORCEMENT.**—If a person does not comply with an order or subpoena of the Commission under this section, the Commission may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court

determines that the order or subpoena was regularly made and duly issued, the court shall enforce the order or subpoena.

#### **§ 42105. Disclosure to public**

Notwithstanding any other provision of law, the Federal Maritime Commission may refuse to disclose to the public a response or other information submitted to it under this chapter.

#### **§ 42106. Other actions to remedy unfavorable conditions**

If the Federal Maritime Commission finds that conditions unfavorable to shipping in foreign trade as described in section 42101 of this title exist, the Commission may—

- (1) limit voyages to and from United States ports or the amount or type of cargo carried;
- (2) suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;
- (3) suspend, in whole or in part, an ocean common carrier's right to operate under any agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenue with other ocean common carriers;
- (4) impose a fee not to exceed \$1,000,000 per voyage; or
- (5) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

#### **§ 42107. Refusal of clearance and entry**

At the request of the Federal Maritime Commission—

- (1) the Secretary of Homeland Security shall—
  - (A) refuse the clearance required by section 60105 of this title to a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title; and
  - (B) collect any fees imposed by the Commission under section 42106(4) of this title; and
- (2) the Secretary of the department in which the Coast Guard is operating shall—
  - (A) deny entry, for purposes of oceanborne trade, of a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title, to a port or place in the United States or the navigable waters of the United States; or

(B) detain the vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

**§ 42108. Penalty for operating under suspended tariff or service contract**

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under section 42104(d)(1) or 42106(2) of this title, or after its right to use another tariff or service contract has been suspended under those provisions, is liable to the United States Government for a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff or service contract.

**§ 42109. Consultation with other agencies**

The Federal Maritime Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies of the United States Government prior to taking any action under this chapter.