

## **Section 19 of the Merchant Marine Act, 1920 (46 App. U.S.C. 876)**

### **§ 876. Power of Secretary and Commission to make rules and regulations**

#### **(a) In general**

The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(1) To make all necessary rules and regulations to carry out the provisions of this Act;

And the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:

(2) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any 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 foreign laws, rules, or regulations or from competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(3) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the steamboat inspection service.

#### **(b) Approval and final action**

No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affects shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the steamboat inspection service, until such rule or regulation has been submitted to the Federal Maritime Commission for its approval and final action has been taken thereon by the Commission or the President.

#### **(c) Submission of facts to President**

Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the Federal Maritime Commission, as provided in subsection (a)(3) of this section, or objects to the decision of the Commission in respect to the approval of any rule or regulation, as provided in subsection (b) of this section, either the Commission or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation

in question may submit the facts to the President, who is authorized to establish or suspend, modify, or annul such rule or regulation.

**(d) Prohibition against preference**

No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

**(e) Motion or petition**

The Commission may initiate a rule or regulation under subsection (a)(2) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under subsection (a)(2) of this section.

**(f) Filing of information**

In furtherance of the purposes of subsection (a)(2) of this section—

(1) the Commission may, by order, require any person (including any 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 which the Commission considers necessary or appropriate;

(2) the Commission may require a report or answers to questions to be made under oath;

(3) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(4) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than \$5,000 for each day that the information is not provided.

**(g) Discovery; witnesses; evidence**

In proceedings under subsection (a)(2) of this section—

(1) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(2) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

(3) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States

(4) for failure to supply information ordered to be produced or compelled by subpoena under paragraph (2), the Commission may—

(A) after notice and an opportunity for hearing, suspend tariffs and service contracts of a common carrier or that common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member, or

(B) assess a civil penalty of not more than \$5,000 for each day that the information is not provided; and

(5) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

**(h) Disclosure to public**

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

**(i) Finding of unfavorable conditions**

If the Commission finds that conditions that are unfavorable to shipping under subsection (a)(2) of this section exist, the Commission may—

(1) limit sailings 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 an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes 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.

**(j) Refusal of clearance and denial of entry**

Upon request by the Commission—

(1) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 91 of this Appendix to a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, and shall collect any fees imposed by the Commission under subsection (i)(4) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that 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.

**(k) Operation 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 subsection (g)(4) or (i)(2) of this section, or after its right to use another tariff or service contract has been suspended under those paragraphs, is subject to 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.

**(l) Consultation with other agencies**

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