

FEDERAL MARITIME COMMISSION

Statement of the Commission

On Representative Complaints

Docket No. 21-13

Issued December 28, 2021

The Commission has traditionally enforced the prohibitions in Chapter 411 of Title 46 of the United States Code by bringing enforcement actions and issuing civil penalties¹ and by adjudicating private party complaints and awarding reparations.² The latter – private party action – is important to alerting the Commission to potential violations of statutes and Commission regulations, clarifying the lines between lawful and unlawful conduct, facilitating the development of Commission precedent, and deterring unfair and unreasonable conduct by carriers, marine terminal operators, and intermediaries.³

The Commission recognizes, however, that litigation has costs in terms of time, attention, money, and relationships. And there may be instances where an individual's or single company's cost-benefit analysis weighs against bringing an otherwise valid, or potentially valid, claim. This may especially be true if the amount of potential recovery is small compared to the cost of litigation or if the potential complainant has fewer resources, experience, or other leverage as compared to the entity against whom the claim would be brought.

Because an individual or company may face challenges to bringing a private party complaint unrelated to the complaint's merits, the Commission emphasizes that individuals and companies are not the only persons who may file complaints alleging violations of Title 46, Chapter 411. Rather, *any* person may file a complaint alleging a violation, including shippers' associations and trade groups or trade associations.

Under 46 U.S.C. § 41301(a), “[a] person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part” Although neither this section, the definitions in § 40102, nor the Commission's Rules of Practice and Procedure define “person,”⁴

¹ See 46 U.S.C. §§ 41302, 41107; 46 C.F.R. §§ 502.63, 502.603.

² See 46 U.S.C. §§ 41301, 41305; 46 C.F.R. § 502.62.

³ This Policy Statement focuses on claims by a person that another has violated Title 46, Chapter 411. If a person instead wants guidance on its own conduct or proposed conduct, the person may file a petition for a declaratory order under 46 C.F.R. § 502.93.

⁴ The Shipping Act of 1916, however, defined “person” to include “corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.” Shipping Act, 1916, Pub. L. No. 64-260. The Shipping Act of 1984 included a similar definition. Pub. L. No. 98-237, § 3(20), 98 Stat. 67, 69.

the Commission has consistently interpreted the term broadly to include not only natural persons but also corporations, partnerships, associations, and public or private organizations.⁵

Additionally, the Commission has long interpreted § 41301(a) to allow any person to file a complaint,⁶ even if that person does not allege that it was injured by the alleged violation.⁷ Section 41301(a) allows a person to file a complaint alleging a violation, and, if the claim is timely, a complainant may seek reparations for an injury.⁸ An association could thus file a complaint to protect the interests of its members even if the association itself did not suffer actual injury.⁹

This does not mean, however, that the nature or status of the person filing a complaint is inconsequential. Reparations, for instance, are only available to a person who suffers “actual injury” caused by a prohibited act.¹⁰ Further, a person filing a complaint, whether an individual or a trade association, becomes a party to an adversary proceeding and is subject to the Commission’s procedural rules.¹¹

⁵ *E.g.*, 46 C.F.R. § 502.41 (“The term ‘party,’ whenever used in this part, includes any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, government agency, or unit thereof representing said agency. A party who files a complaint under § 502.62 shall be designated as ‘complainant.’”); 46 C.F.R. § 540.21 (defining person broadly). These definitions are consistent with 1 U.S.C. § 1, which provides that “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the word[] ‘person’ . . . includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”

⁶ 46 C.F.R. § 502.61(a) (“Any person may commence a proceeding by filing a complaint (Rule 62) for a formal adjudication or by filing a claim for the informal adjudication of small claims (subpart S).”); *In re Vehicle Carrier Services*, 1 F.M.C.2d 440, 451 n. 10 (FMC 2019). Both the Shipping Act of 1916 and the Shipping Act of 1984 expressly stated that “any person” could file a complaint. Pub. L. No. 64-260 § 22; Pub. L. No. 98-237, § 11(a), 98 Stat. 67, 80. This was changed to “a person” when the Shipping Act was recodified as positive law, Pub. L. No. 109-304, 120 Stat. 1485 (2006), but there is no indication that Congress intended to change the scope of who could file a complaint.

⁷ *Cargill, Inc. v. Waterman Steamship Corp.*, 1981 FMC LEXIS 34, *39 (FMC Nov. 30, 1981) (“Cargill clearly has standing to prosecute a complaint under section 22 of the Shipping Act [of 1916] even if it were not alleging injuries to itself.”); *Fed. Mar. Comm’n v. Zim Israel Navigation*, 263 F. Supp. 618, 621 (SDNY 1967) (“Whether or not the insurers are entitled to reparations in the proceedings before the Commission – a question which need not be decided here – they have standing to file the complaint and the Commission has jurisdiction to entertain it.”).

⁸ *Cf. Isthmian S.S. Co. v. United States*, 53 F.2d 251, 253 (SDNY 1931) (“While it is evident [in the 1916 Act] that in order to obtain ‘reparation’ for injury ‘a person must be directly affected by the violation, the words ‘injury if any’ indicate that the remedy does not necessarily include ‘reparation,’ but may relate only to the prevention of unfair or discriminatory rates in the interest of the public.”).

⁹ The standing requirements of Article III of the Constitution are not directly applicable to agency proceedings. *See, e.g., Pfizer Inc. v. Shalala*, 182 F.3d 975, 980 (D.C. Cir. 1999); *US Magnesium, LLC v. EPA*, 690 F.3d 1157, 1164 (10th Cir. 2012).

¹⁰ 46 U.S.C. §§ 41301(a), 41305(b).

¹¹ *See generally* 46 C.F.R. Part 502; *e.g.*, 46 C.F.R. § 502.6(a) (requiring that pleadings be well grounded in fact and not filed for improper purposes). Also, if a trade association or shippers’ association were to file a complaint, the association’s member could still be subject to relevant third-party discovery. *See* 46 C.F.R. § 502.131.

To conclude, private party complaint proceedings significantly influence the development of shipping law, and neither the text of Title 46 nor the Commission's interpretation of the statute preclude a person from filing a complaint to protect others from potentially unlawful conduct.

By the Commission.

William Cody
Secretary