§ 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) **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.

(6) **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.

(7) **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.

(8) **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.

(9) **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.

(10) **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.

(11) **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.

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

(13) **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.

(14) **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.

(15) **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.
(16) **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.

(17) **Ocean common carrier.**— The term “ocean common carrier” means a vessel-operating common carrier.

(18) **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.

(19) **Ocean transportation intermediary.**— The term “ocean transportation intermediary” means an ocean freight forwarder or a non-vessel-operating common carrier.

(20) **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.

(21) **Shipment.**— The term “shipment” means all of the cargo carried under the terms of a single bill of lading.

(22) **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.

(23) **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.

(24) **Through rate.**— The term “through rate” means the single amount charged by a common carrier in connection with through transportation.

(25) **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.

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In the definition of “service contract”, the words “The contract may also specify provisions in the event of nonperformance on the part of any party” are omitted as unnecessary and inappropriate for a definition.

In the definition of “shipper”, the words “non-vessel-operating common carrier” are substituted for “ocean transportation intermediary, as defined in paragraph (17)(B) of this section” because paragraph (17)(B) contains a definition of “non-vessel-operating common carrier” which is restated as a separate definition.

The definition of “Commission” is omitted because the full name of the Federal Maritime Commission is used the first time the Commission is referred to in each section. The definition of “person” is omitted as unnecessary because of 1 U.S.C. 1. The definition of “United States” is omitted because the term is defined in chapter 1 of the revised title for purposes of the title.

**References in Text**

The Sherman Act, referred to in par. (2)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in par. (2)(C), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Act of June 19, 1936, referred to in par. (2)(D), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Act, the Robinson-Patman Antidiscrimination Act, and the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (2)(E), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Antitrust Civil Process Act, referred to in par. (2)(F), is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.