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Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, div. G, title LVXXXVI [LXXXVI], §§ 8604(c), 8605(b)(5), Jan. 1, 2021, 134 Stat. 4764, 4765, added item for chapter 425 and item for part D. Item for chapter 425 was formatted to the style of this analysis to reflect the probable intent of Congress.

PART A—OCEAN SHIPPING  
CHAPTER 401—GENERAL

Sec.	
40101.	Purposes.
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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;
- (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.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1523; Pub. L. 117-146, § 2, June 16, 2022, 136 Stat. 1272.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40101 .....	46 App.:1701.	Pub. L. 98-237, § 2, Mar. 20, 1984, 98 Stat. 67; Pub. L. 105-258, title I, § 101, Oct. 14, 1998, 112 Stat. 1902.

Editorial Notes

AMENDMENTS

2022—Par. (2), Pub. L. 117-146, § 2(1), added par. (2) and struck out former par. (2) which read as follows: “provide an efficient and economic transportation system in the ocean commerce of the United States that is, in-

<sup>1</sup> Section number editorially supplied.

sofar as possible, in harmony with, and responsive to, international shipping practices:”.

Par. (3), Pub. L. 117-146, § 2(2), inserted “and supporting commerce” after “needs”.

Par. (4), Pub. L. 117-146, § 2(3), added par. (4) and struck out former par. (4) which read as follows: “promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.”

Statutory Notes and Related Subsidiaries

EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS

Pub. L. 98-237, § 20(d), Mar. 20, 1984, 98 Stat. 90; Pub. L. 105-258, title I, § 117(1), Oct. 14, 1998, 112 Stat. 1914, provided that: “All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], or the Shipping Act of 1984 [former 46 U.S.C. App. 1701 et seq., see Disposition Table preceding section 101 of this title], shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998 [Pub. L. 105-258, Oct. 14, 1998, 112 Stat. 1902], and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998.”

§ 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.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1523; Pub. L. 115-282, title VII, §704, Dec. 4, 2018, 132 Stat. 4294.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40102(1) .....	46 App.:1702(1).	Pub. L. 98-237, §3, Mar. 20, 1984, 98 Stat. 67; Pub. L. 99-307, §11, May 19, 1986, 100 Stat. 447; Pub. L. 105-258, title I, §102, Oct. 14, 1998, 112 Stat. 1902; Pub. L. 105-383, title IV, §424(d), Nov. 13, 1998, 112 Stat. 3441.
40102(2) .....	46 App.:1702(2).	
40102(3) .....	46 App.:1702(3).	
40102(4) .....	46 App.:1702(4).	
40102(5) .....	46 App.:1702(6) (last sentence).	
40102(6) .....	46 App.:1702(6) (1st sentence).	
40102(7) .....	46 App.:1702(7).	
40102(8) .....	46 App.:1702(8).	
40102(9) .....	46 App.:1702(9).	
40102(10) .....	46 App.:1702(10).	
40102(11) .....	46 App.:1702(11).	
40102(12) .....	46 App.:1702(12).	
40102(13) .....	46 App.:1702(13).	
40102(14) .....	46 App.:1702(14).	
40102(15) .....	46 App.:1702(15).	
40102(16) .....	46 App.:1702(17)(B).	
40102(17) .....	46 App.:1702(16).	
40102(18) .....	46 App.:1702(17)(A).	
40102(19) .....	46 App.:1702(17) (1st sentence).	
40102(20) .....	46 App.:1702(19).	
40102(21) .....	46 App.:1702(20).	
40102(22) .....	46 App.:1702(21).	
40102(23) .....	46 App.:1702(22).	
40102(24) .....	46 App.:1702(23).	
40102(25) .....	46 App.:1702(24).	

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.

Editorial Notes

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 Anti-

discrimination 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 principally 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.

AMENDMENTS

2018—Pars. (5) to (26). Pub. L. 115-282 added par. (5) and redesignated former pars. (5) to (25) as (6) to (26), respectively.

Statutory Notes and Related Subsidiaries

AGREEMENTS UNAFFECTED

Pub. L. 115-282, title VII, §714, Dec. 4, 2018, 132 Stat. 4299, provided that: “Nothing in this Act [probably should be “this title”], enacting section 41105A of this title, amending sections 40102, 40104, 40304, 40307, 40901, 40902, 41104, 41105, 41307, 46103, 46106, and 46108 of this title, and enacting provisions set out as notes under sections 40304, 41104, 41307, and 46105 of this title] may be construed—

“(1) to limit or amend the definition of ‘agreement’ in section 40102(1) of title 46, United States Code, with respect to the exclusion of maritime labor agreements; or

“(2) to apply to a maritime labor agreement (as defined in section 40102(15) of that title).”

§ 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.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1527.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40103 .....	46 App.:1715.	Pub. L. 98-237, §16, Mar. 20, 1984; 98 Stat. 84; Pub. L. 105-258, title I, §114, Oct. 14, 1998, 112 Stat. 1912.

§ 40104. Reports filed with the Commission

(a) REPORTS.—

(1) IN GENERAL.—The Federal Maritime Commission may require a common carrier or ma-

riner 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.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1527; Pub. L. 115-282, title VII, §705, Dec. 4, 2018, 132 Stat. 4294.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40104 .....	46 App.:1714.	Pub. L. 98-237, §15, Mar. 20, 1984; 98 Stat. 84; Pub. L. 98-595, §3(b)(3), Oct. 30, 1984; 98 Stat. 3133; Pub. L. 105-258, title I, §113, Oct. 14, 1998, 112 Stat. 1912.

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-282 amended subsec. (a) generally. Prior to amendment, text read as follows: “The Federal Maritime Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier 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 carrier. The report, account, record, rate, charge, or memorandum shall be made under oath if the Commission requires, and shall be filed in the form and within the time prescribed by the Commission.”

CHAPTER 403—AGREEMENTS

- Sec. 40301. Application.
- 40302. Filing requirements.
- 40303. Content requirements.
- 40304. Commission action.
- 40305. Assessment agreements.
- 40306. Nondisclosure of information.
- 40307. Exemption from antitrust laws.

§ 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 ac-