H. R. 4996

To amend title 46, United States Code, with respect to prohibited acts by ocean common carriers or marine terminal operators, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 10, 2021

Mr. GARAMENDI (for himself and Mr. JOHNSON of South Dakota) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 46, United States Code, with respect to prohibited acts by ocean common carriers or marine terminal operators, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ocean Shipping Reform Act of 2021”.

SEC. 2. PURPOSES.

Section 40101 of title 46, United States Code, is amended—
(1) in paragraph (1) by striking “with” and all that follows through the semicolon;

(2) by striking paragraph (2) and inserting the following:

“(2) ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States;”;

(3) in paragraph (3) by inserting “and commerce” before “needs”; and

(4) by striking paragraph (4) and inserting the following:

“(4) support the growth and development of United States exports; and

“(5) promote reciprocal trade in the foreign commerce of the United States.”.

SEC. 3. SERVICE CONTRACTS.

Section 40502 of title 46, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (7) by striking “; and” and inserting a semicolon;

(B) in paragraph (8) by striking the period and inserting “; and”; and

(C) by adding at the end the following:
“(9) any other essential terms or minimum contract requirements that the Federal Maritime Commission determines necessary or appropriate”; and

(2) by adding at the end the following:

“(g) Service Contract Requirement.—A common carrier may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to service contracts.”.

SEC. 4. SHIPPING EXCHANGE REGISTRY.

(a) In General.—Chapter 405 of title 46, United States Code, is amended by adding at the end the following:

§ 40504. Shipping exchange registry

“(a) In General.—No person may operate a shipping exchange involving ocean transportation in the foreign commerce of the United States unless the shipping exchange is registered as a national shipping exchange under the terms and conditions provided in this section and the regulations issued pursuant to this section.

“(b) Registration.—A person shall register a shipping exchange by filing with the Federal Maritime Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and docu-
ments as the Commission, by rule, may prescribe as nec-
essary or appropriate in the public interest.

“(c) EXEMPTION.—The Commission may exempt,
conditionally or unconditionally, a shipping exchange from
registration and licensing under this section if the Com-
mmission finds that the shipping exchange is subject to com-
parable, comprehensive supervision and regulation by the
appropriate governmental authorities in the home country
of the shipping exchange.

“(d) REGULATIONS.—In issuing regulations pursuant
to subsection (a), the Commission shall set standards
necessary to carry out subtitle IV of title 46, United
States Code, for registered national shipping exchanges,
including the minimum requirements for service contracts
established under section 40502 of such title, and issue
licenses for registered national shipping exchanges.”.

(b) APPLICABILITY.—The registration requirement
under section 40504 of title 46, United States Code (as
added by this section), shall take effect on the date on
which the Federal Maritime Commission issues regula-
tions required under subsection (b) of such section.

(c) CLERICAL AMENDMENT.—The analysis for chap-
ter 405 of title 46, United States Code, is amended by
adding at the end the following:

“40504. Shipping exchange registry.”.
SEC. 5. PROHIBITION ON RETALIATION.

Section 41102 of title 46, United States Code, is amended by adding at the end the following:

“(d) PROHIBITION ON RETALIATION.—A common carrier, marine terminal operator, or ocean transportation intermediary, either alone or in conjunction with any other person, directly or indirectly, may not retaliate against a shipper, a shipper’s agent, or a motor carrier by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason.”.

SEC. 6. PUBLIC DISCLOSURE.

Section 41103 of title 46, United States Code, is amended by adding at the end the following:

“(d) PUBLIC DISCLOSURES.—The Federal Maritime Commission shall publish, and annually update, on the website of the Commission—

“(1) all findings by the Commission of false certifications by common carriers or marine terminal operators under section 41104(a)(18) of this title; and

“(2) all penalties imposed or assessed against common carriers or marine terminal operators, as applicable, under sections 41107, 41108, and 41109,
listed by each common carrier or marine terminal
operator.”.

SEC. 7. COMMON CARRIERS.

(a) In General.—Section 41104 of title 46, United
States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)

by inserting “, or ocean common carrier where

specified,” after “A common carrier”; 

(B) by striking paragraph (3) and insert-

ing the following:

“(3) establish rules and practices for the alloca-

tion and interchange of necessary equipment that

unreasonably reduce accessibility to such equipment

or efficiencies in performance of the transportation

services;”; 

(C) in paragraph (12) by striking “; or”

and inserting a semicolon;

(D) in paragraph (13) by striking the pe-

riod and inserting a semicolon; and

(E) by adding at the end the following:

“(14) fail to furnish or cause a contractor to

fail to furnish the facilities and instrumentalities

needed to perform the transportation services, in-

cluding containers;
“(15) fail to establish, observe, and enforce just and reasonable regulations and practices relating to the allocation of vessel space accommodations in consideration of foreseeable import and export demands;

“(16) unreasonably decline export cargo bookings if such cargo can be loaded safely and timely and carried on a vessel scheduled for such cargo’s immediate destination; or

“(17) invoice any party for demurrage or detention charges, unless accompanied by an accurate certification that such charges comply with—

“(A) all provisions of section 545 of title 46, Code of Federal Regulations;

“(B) the findings of the final rule published on May 18, 2020, titled ‘Interpretive Rule on Demurrage and Detention Under the Shipping Act’ (85 Fed. Reg. 29638); and

“(C) any subsequent rules and regulations concerning demurrage or detention that may be issued by the Commission.”; and

(2) by adding at the end the following:

“(d) APPLICATION OF CERTAIN PROVISIONS.—The prohibition under subsection (a)(17) shall apply to marine terminal operators, except that such prohibition shall not
apply to terminal detention or demurrage charges by marine terminal operators if such charges are based on public port tariffs set under State law.

“(e) VIOLATION OF PROHIBITION.—Any common carrier or marine terminal operator, if applicable, that violates the prohibitions under paragraph (14), (15), (16), or (17) of subsection (a) shall be subject to a penalty under sections 41108(a).

“(f) CERTIFICATION.—Failure to include a certification under subsection (a)(17) alongside any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.

“(g) DEMURRAGE AND DETENTION PRACTICES AND CHARGES.—Notwithstanding any other provision of law and not later than 30 days of the date of enactment of this subsection, a common carrier or marine terminal operator, shall—

“(1) act in a manner consistent with—

“(A) the findings of the final rule published on May 18, 2020, titled ‘Interpretive Rule on Demurrage and Detention Under the Shipping Act’ (85 Fed. Reg. 29638); and

“(B) any subsequent rules or regulations concerning demurrage or detention which may be issued by the Commission; and
“(2) maintain all records supporting the assessment of any demurrage or detention charges for a period of 5 years and provide such records to the invoiced party or to the Commission on request; and

“(3) bear the burden of establishing the reasonableness of any demurrage or detention charges which are the subject of any complaint proceeding challenging a common carrier or marine terminal operator demurrage or detention charges as unjust and unreasonable.

“(h) MINIMUM SERVICE STANDARDS.—A common carrier shall be obligated to adhere to minimum service standards that meet the public interest.”.

(b) RULEMAKING ON PROHIBITION.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Federal Maritime Commission shall initiate a rulemaking proceeding to establish rules prohibiting common carriers and marine terminal operators from adopting and applying unjust and unreasonable demurrage and detention rules and practices.

(2) CONTENTS.—The rulemaking under paragraph (1) shall address the issues identified in the final rule published on May 18, 2020, titled “Interpretive Rule on Demurrage and Detention Under
the Shipping Act” (85 Fed. Reg. 29638), including the following:

(A) Establishing clear and uniform definitions for demurrage, detention, cargo availability for retrieval and associated free time, and other terminology used in the rule. The definition for cargo availability for retrieval shall account for government inspections.

(B) Establishing that demurrage and detention rules are not independent revenue sources but incentivize efficiencies in the ocean transportation network, including the retrieval of cargo and return of equipment.

(C) Prohibiting the consumption of free time or collection of demurrage and detention charges when obstacles to the cargo retrieval or return of equipment are within the scope of responsibility of the carrier or their agent and beyond the control of the invoiced or contracting party.

(D) Prohibiting the commencement or continuation of free time unless cargo is available for retrieval and timely notice of cargo availability has been provided.
(E) Prohibiting the consumption of free
time or collection of demurrage charges when
marine terminal appointments are not available
during the free time period.

(F) Prohibiting the consumption of free
time or collection of detention charges on con-
tainers when the marine terminal required for
return is not open or available.

(G) Requiring common carriers to provide
timely notice of—

(i) cargo availability after vessel dis-
charge;

(ii) container return locations; and

(iii) advance notice for container early
return dates.

(H) Establishing minimum billing require-
ments, including timeliness and supporting in-
formation that shall be included in or with in-
voices for demurrage and detention charges
that will allow the invoiced party to validate the
charges.

(I) Requiring common carriers and marine
terminal operators to establish reasonable dis-
pute resolution policies and practices.
(J) Establishing the responsibilities of shippers, receivers, and draymen with respect to cargo retrieval and equipment return.

(K) Examining the invoicing of parties other than the shipper for any demurrage, detention, or other similar per container charges, including determining whether such parties should be billed at all.

(e) Rulemaking on Minimum Service Standards.—Not later than 90 days after the date of enactment of this Act, the Commission shall initiate a rulemaking proceeding to incorporate subsections (d) through (h) of 41104 of title 46, United States Code, and subsection (c) of this section and shall include the following:

(1) The obligation to adopt reasonable rules and practices related to or connected with the furnishing and allocation of adequate and suitable equipment, vessel space accommodations, and other instrumentalities necessary for the receiving, loading, carriage, unloading and delivery of cargo.

(2) The duty to perform the contract of carriage with reasonable dispatch.

(3) The requirement to carry United States export cargo if such cargo can be loaded safely and
timely and carried on a vessel scheduled for such
cargo’s immediate destination.

(4) The requirement of ocean common carriers
to establish contingency service plans to address and
mitigate service disruptions and inefficiencies during
periods of port congestion and other market disrup-
tions.

(d) Rulemaking on Unreasonably Decline.—

(1) In general.—Not later than 90 days after
the date of enactment of this Act, the Commission
shall initiate a rulemaking proceeding to define “un-
reasonably decline” for the purposes of subsection
(a)(16) of section 41104 of title 46, United States
Code.

(2) Contents.—The rulemaking under para-
graph (1) shall address the unreasonableness of
ocean common carriers prioritizing the shipment of
empty containers while excluding, limiting, or other-
wise reducing the shipment of full, loaded containers
when such containers are readily available to be
shipped and the appurtenant vessel has the weight
and space capacity available to carry such containers
if loaded in a safe and timely manner.
SEC. 8. ASSESSMENT OF PENALTIES.
(a) IN GENERAL.—Section 41109 of title 46, United States Code, is amended—
(1) in subsection (a)—
(A) by inserting “or, in addition to or in lieu of a civil penalty, order the refund of money” after “this part.”; and
(B) by inserting “or refund of money” after “conditions, a civil penalty”; and
(2) in subsection (c) by inserting “or refund of money” after “civil penalty”;
(3) in subsection (e) by inserting “or order a refund of money” after “civil penalty”; and
(4) in subsection (f) by inserting “or who is ordered to refund money” after “civil penalty is assessed”.

SEC. 9. DATA COLLECTION.
(a) IN GENERAL.—Chapter 411 of title 46, United States Code, is amended by adding at the end the following:
§ 41110. Data collection
“(a) IN GENERAL.—Common carriers covered under this chapter shall submit to the Federal Maritime Commission a calendar quarterly report that describes the total import and export tonnage and the total loaded and empty 20-foot equivalent units per vessel (making port in
the United States, including any territory or possession of the United States) operated by such common carrier.

“(b) PROHIBITION ON DUPLICATION.—Data required to be reported under subsection (a) may not duplicate information—

“(1) submitted to the Corps of Engineers pursuant to section 11 of the Act entitled ‘An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes’, approved September 22, 1922 (33 U.S.C. 555), by an ocean common carrier acting as a vessel operator; or

“(2) submitted pursuant to section 481 of the Tariff Act of 1930 (19 U.S.C. 1481) to Customs and Border Protection by merchandise importers.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 411 of title 46, United States Code, is amended by adding at the end the following:

“41110. Data collection.”.

SEC. 10. COMPLAINTS.

Section 41301 to title 46, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “except section 41307(b)(1)” and insert “including section 41307(b)(1)”;}
(B) by inserting “A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part.” after “the violation.”; and

(2) by adding at the end the following:

“(d) COMPLAINTS REGARDING CERTIFIED DEMURRAGE OR DETENTION CHARGES.—

“(1) IN GENERAL.—A person may submit to the Federal Maritime Commission, and the Commission shall accept, information concerning demurrage or detention charges which were, or were required to be, certified pursuant to section 41104(a)(17). The information submitted to the Commission may include the bill of lading numbers, applicable carrier certifications, the minimum billing requirements for demurrage and detention invoices established under section 41104(h)(2)(H), or any other relevant information.

“(2) REFUND.—Upon receipt of submissions under paragraph (1), if the Commission determines that the certification of the carrier under section 41104(a)(17) did not accompany the detention or demurrage charge or that such certification was inaccurate or false, the Commission shall promptly
order the refund of any demurrage and detention charges paid.

“(3) INVESTIGATION.—Upon receipt of submissions under paragraph (1), including the certification under section 41104(a)(17), the Commission shall promptly investigate the accuracy of such certification with regard to compliance with the provisions of part 545 of title 46, Code of Federal Regulations.

“(4) PENALTIES.—In the event of a finding that the certification under section 41104(a)(17) was inaccurate or false after submission under paragraph (1), penalties under section 41107 shall be applied if the Commission determines such certification was inaccurate or false due to lack of due care.”.

SEC. 11. INVESTIGATIONS.

Section 41302 of title 46, United States Code, is amended by striking “or agreement” and inserting “agreement, fee, or charge”.

SEC. 12. AWARD OF ADDITIONAL AMOUNTS.

Section 41305(c) of title 46, United States Code, is amended—

(1) by inserting “or (c)” after “41102(b)”; and
(2) by inserting “or if the Commission determined that a violation of section 41104(a)(17) of this title was made willfully and knowingly,” after “of this title”.

SEC. 13. INJUNCTIVE RELIEF.

Section 41307(b)(3) to title 46, United States Code, is amended by striking “not”.

SEC. 14. ENFORCEMENT OF REPARATION ORDERS.

Section 41309 of title 46, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “or refund of money” after “payment of reparation”; and

(B) by inserting “or to whom the refund of money was ordered” after “award was made”;

and

(2) in subsection (b) by inserting “or refund of money” after “award of reparation”.

SEC. 15. NATIONAL SHIPPER ADVISORY COMMITTEE.

(a) National Shipper Advisory Committee.—

Section 42502(c)(3) of title 46, United States Code, is amended by inserting “, including customs brokers or freight forwarders” after “ocean common carriers” each place such term occurs.
(b) ANALYSIS.—The analysis for chapter 425 of title 46, United States Code, is amended by inserting before the item relating to section 42501 the following:

“Sec.”.

SEC. 16. ANNUAL REPORT TO CONGRESS.

Section 46106(b) of title 46, United States Code, is amended—

(1) in paragraph (5) by striking “and” at the end;

(2) in paragraph (6)—

(A) by striking “under this part” and inserting “under this chapter”; and

(B) by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

“(7) an identification of any anticompetitive or nonreciprocal trade practices by ocean common carriers;

“(8) an analysis of any trade imbalance resulting from the business practices of ocean common carriers, including an analysis of the data collected under section 41111; and

“(9) an identification of any otherwise concerning practices by ocean common carriers, particularly such carriers that are—
“(A) State-owned or State-controlled enterprises; or

“(B) owned or controlled by, is a subsidiary of, or is otherwise related legally or financially (other than a minority relationship or investment) to a corporation based in a country—

“(i) identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this paragraph;

“(ii) identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a priority foreign country under subsection (a)(2) of that section; or

“(iii) subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).”.

SEC. 17. TECHNICAL AMENDMENTS.

(a) FEDERAL MARITIME COMMISSION.—The analysis for chapter 461 of title 46, United States Code, is amended by striking the first item relating to chapter 461.
(b) ADDITIONAL PENALTIES.—Section 41108(a) of title 46, United States Code, is amended by striking “section 41104(1), (2), or (7)” and inserting “paragraphs (1), (2), or (7) of section 41104(a)”.

(c) ASSESSMENT OF PENALTIES.—Section 41109(c) of title 46, United States Code, is amended by striking “section 41104(1) or (2)” and inserting “paragraph (1) or (2) of section 41104(a)”.