

117TH CONGRESS
1ST SESSION

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ocean Shipping Re-
5 form Act of 2021”.

6 **SEC. 2. PURPOSES.**

7 Section 40101 of title 46, United States Code, is
8 amended—

1 (1) in paragraph (1) by striking “with” and all
2 that follows through the semicolon;

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

5 “(2) ensure an efficient, competitive, and eco-
6 nomical transportation system in the ocean com-
7 merce of the United States;”;

8 (3) in paragraph (3) by inserting “and com-
9 merce” before “needs”; and

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

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

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

16 **SEC. 3. SERVICE CONTRACTS.**

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

19 (1) in subsection (c)—

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

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

24 (C) by adding at the end the following:

1 “(9) any other essential terms or minimum con-
 2 tract requirements that the Federal Maritime Com-
 3 mission determines necessary or appropriate”; and

4 (2) by adding at the end the following:

5 “(g) SERVICE CONTRACT REQUIREMENT.—A com-
 6 mon carrier may not fail to establish, observe, and enforce
 7 just and reasonable regulations and practices relating to
 8 service contracts.”.

9 **SEC. 4. SHIPPING EXCHANGE REGISTRY.**

10 (a) IN GENERAL.—Chapter 405 of title 46, United
 11 States Code, is amended by adding at the end the fol-
 12 lowing:

13 **“§ 40504. Shipping exchange registry**

14 “(a) IN GENERAL.—No person may operate a ship-
 15 ping exchange involving ocean transportation in the for-
 16 eign commerce of the United States unless the shipping
 17 exchange is registered as a national shipping exchange
 18 under the terms and conditions provided in this section
 19 and the regulations issued pursuant to this section.

20 “(b) REGISTRATION.—A person shall register a ship-
 21 ping exchange by filing with the Federal Maritime Com-
 22 mission an application for registration in such form as the
 23 Commission, by rule, may prescribe containing the rules
 24 of the exchange and such other information and docu-

1 ments as the Commission, by rule, may prescribe as nec-
2 essary or appropriate in the public interest.

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

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

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

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

“40504. Shipping exchange registry.”.

1 **SEC. 5. PROHIBITION ON RETALIATION.**

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

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

14 **SEC. 6. PUBLIC DISCLOSURE.**

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

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

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

24 “(2) all penalties imposed or assessed against
25 common carriers or marine terminal operators, as
26 applicable, under sections 41107, 41108, and 41109,

1 listed by each common carrier or marine terminal
2 operator.”.

3 **SEC. 7. COMMON CARRIERS.**

4 (a) IN GENERAL.—Section 41104 of title 46, United
5 States Code, is amended—

6 (1) in subsection (a)—

7 (A) in the matter preceding paragraph (1)
8 by inserting “, or ocean common carrier where
9 specified,” after “A common carrier”;

10 (B) by striking paragraph (3) and insert-
11 ing the following:

12 “(3) establish rules and practices for the alloca-
13 tion and interchange of necessary equipment that
14 unreasonably reduce accessibility to such equipment
15 or efficiencies in performance of the transportation
16 services;”;

17 (C) in paragraph (12) by striking “; or”
18 and inserting a semicolon;

19 (D) in paragraph (13) by striking the pe-
20 riod and inserting a semicolon; and

21 (E) by adding at the end the following:

22 “(14) fail to furnish or cause a contractor to
23 fail to furnish the facilities and instrumentalities
24 needed to perform the transportation services, in-
25 cluding containers;

1 “(15) fail to establish, observe, and enforce just
2 and reasonable regulations and practices relating to
3 the allocation of vessel space accommodations in
4 consideration of foreseeable import and export de-
5 mands;

6 “(16) unreasonably decline export cargo book-
7 ings if such cargo can be loaded safely and timely
8 and carried on a vessel scheduled for such cargo’s
9 immediate destination; or

10 “(17) invoice any party for demurrage or deten-
11 tion charges, unless accompanied by an accurate cer-
12 tification that such charges comply with—

13 “(A) all provisions of section 545 of title
14 46, Code of Federal Regulations;

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

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

22 (2) by adding at the end the following:

23 “(d) APPLICATION OF CERTAIN PROVISIONS.—The
24 prohibition under subsection (a)(17) shall apply to marine
25 terminal operators, except that such prohibition shall not

1 apply to terminal detention or demurrage charges by ma-
2 rine terminal operators if such charges are based on public
3 port tariffs set under State law.

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

9 “(f) CERTIFICATION.—Failure to include a certifi-
10 cation under subsection (a)(17) alongside any demurrage
11 or detention charge shall eliminate any obligation of the
12 charged party to pay the applicable charge.

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

18 “(1) act in a manner consistent with—

19 “(A) the findings of the final rule pub-
20 lished on May 18, 2020, titled ‘Interpretive
21 Rule on Demurrage and Detention Under the
22 Shipping Act’ (85 Fed. Reg. 29638); and

23 “(B) any subsequent rules or regulations
24 concerning demurrage or detention which may
25 be issued by the Commission; and

1 “(2) maintain all records supporting the assess-
2 ment of any demurrage or detention charges for a
3 period of 5 years and provide such records to the
4 invoiced party or to the Commission on request; and

5 “(3) bear the burden of establishing the reason-
6 ableness of any demurrage or detention charges
7 which are the subject of any complaint proceeding
8 challenging a common carrier or marine terminal op-
9 erator demurrage or detention charges as unjust and
10 unreasonable.

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

14 (b) RULEMAKING ON PROHIBITION.—

15 (1) IN GENERAL.—Not later than 90 days after
16 the date of enactment of this Act, the Federal Mari-
17 time Commission shall initiate a rulemaking pro-
18 ceeding to establish rules prohibiting common car-
19 riers and marine terminal operators from adopting
20 and applying unjust and unreasonable demurrage
21 and detention rules and practices.

22 (2) CONTENTS.—The rulemaking under para-
23 graph (1) shall address the issues identified in the
24 final rule published on May 18, 2020, titled “Inter-
25 pretive Rule on Demurrage and Detention Under

1 the Shipping Act” (85 Fed. Reg. 29638), including
2 the following:

3 (A) Establishing clear and uniform defini-
4 tions for demurrage, detention, cargo avail-
5 ability for retrieval and associated free time,
6 and other terminology used in the rule. The
7 definition for cargo availability for retrieval
8 shall account for government inspections.

9 (B) Establishing that demurrage and de-
10 tention rules are not independent revenue
11 sources but incentivize efficiencies in the ocean
12 transportation network, including the retrieval
13 of cargo and return of equipment.

14 (C) Prohibiting the consumption of free
15 time or collection of demurrage and detention
16 charges when obstacles to the cargo retrieval or
17 return of equipment are within the scope of re-
18 sponsibility of the carrier or their agent and be-
19 yond the control of the invoiced or contracting
20 party.

21 (D) Prohibiting the commencement or con-
22 tinuation of free time unless cargo is available
23 for retrieval and timely notice of cargo avail-
24 ability has been provided.

1 (E) Prohibiting the consumption of free
2 time or collection of demurrage charges when
3 marine terminal appointments are not available
4 during the free time period.

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

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

11 (i) cargo availability after vessel dis-
12 charge;

13 (ii) container return locations; and

14 (iii) advance notice for container early
15 return dates.

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

22 (I) Requiring common carriers and marine
23 terminal operators to establish reasonable dis-
24 pute resolution policies and practices.

1 (J) Establishing the responsibilities of
2 shippers, receivers, and draymen with respect to
3 cargo retrieval and equipment return.

4 (K) Examining the invoicing of parties
5 other than the shipper for any demurrage, de-
6 tention, or other similar per container charges,
7 including determining whether such parties
8 should be billed at all.

9 (c) RULEMAKING ON MINIMUM SERVICE STAND-
10 ARDS.—Not later than 90 days after the date of enact-
11 ment of this Act, the Commission shall initiate a rule-
12 making proceeding to incorporate subsections (d) through
13 (h) of 41104 of title 46, United States Code, and sub-
14 section (c) of this section and shall include the following:

15 (1) The obligation to adopt reasonable rules
16 and practices related to or connected with the fur-
17 nishing and allocation of adequate and suitable
18 equipment, vessel space accommodations, and other
19 instrumentalities necessary for the receiving, load-
20 ing, carriage, unloading and delivery of cargo.

21 (2) The duty to perform the contract of car-
22 riage with reasonable dispatch.

23 (3) The requirement to carry United States ex-
24 port cargo if such cargo can be loaded safely and

1 timely and carried on a vessel scheduled for such
2 cargo’s immediate destination.

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

8 (d) RULEMAKING ON UNREASONABLY DECLINE.—

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

15 (2) CONTENTS.—The rulemaking under para-
16 graph (1) shall address the unreasonableness of
17 ocean common carriers prioritizing the shipment of
18 empty containers while excluding, limiting, or other-
19 wise reducing the shipment of full, loaded containers
20 when such containers are readily available to be
21 shipped and the appurtenant vessel has the weight
22 and space capacity available to carry such containers
23 if loaded in a safe and timely manner.

1 **SEC. 8. ASSESSMENT OF PENALTIES.**

2 (a) IN GENERAL.—Section 41109 of title 46, United
3 States Code, is amended—

4 (1) in subsection (a)—

5 (A) by inserting “or, in addition to or in
6 lieu of a civil penalty, order the refund of
7 money” after “this part.”; and

8 (B) by inserting “or refund of money”
9 after “conditions, a civil penalty”;

10 (2) in subsection (c) by inserting “or refund of
11 money” after “civil penalty”;

12 (3) in subsection (e) by inserting “or order a
13 refund of money” after “civil penalty”; and

14 (4) in subsection (f) by inserting “or who is or-
15 dered to refund money” after “civil penalty is as-
16 sessed”.

17 **SEC. 9. DATA COLLECTION.**

18 (a) IN GENERAL.—Chapter 411 of title 46, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **“§ 41110. Data collection**

22 “(a) IN GENERAL.—Common carriers covered under
23 this chapter shall submit to the Federal Maritime Com-
24 mission a calendar quarterly report that describes the
25 total import and export tonnage and the total loaded and
26 empty 20-foot equivalent units per vessel (making port in

1 the United States, including any territory or possession
 2 of the United States) operated by such common carrier.

3 “(b) PROHIBITION ON DUPLICATION.—Data required
 4 to be reported under subsection (a) may not duplicate in-
 5 formation—

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

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

16 (b) CLERICAL AMENDMENT.—The analysis for chap-
 17 ter 411 of title 46, United States Code, is amended by
 18 adding at the end the following:

“41110. Data collection.”.

19 **SEC. 10. COMPLAINTS.**

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

22 (1) in subsection (a)—

23 (A) by striking “except section
 24 41307(b)(1)” and insert “including section
 25 41307(b)(1)”; and

1 (B) by inserting “A person may file with
2 the Federal Maritime Commission a sworn com-
3 plaint alleging a violation of this part.” after
4 “the violation.”; and

5 (2) by adding at the end the following:

6 “(d) COMPLAINTS REGARDING CERTIFIED DEMUR-
7 RAGE OR DETENTION CHARGES.—

8 “(1) IN GENERAL.—A person may submit to
9 the Federal Maritime Commission, and the Commis-
10 sion shall accept, information concerning demurrage
11 or detention charges which were, or were required to
12 be, certified pursuant to section 41104(a)(17). The
13 information submitted to the Commission may in-
14 clude the bill of lading numbers, applicable carrier
15 certifications, the minimum billing requirements for
16 demurrage and detention invoices established under
17 section 41104(h)(2)(H), or any other relevant infor-
18 mation.

19 “(2) REFUND.—Upon receipt of submissions
20 under paragraph (1), if the Commission determines
21 that the certification of the carrier under section
22 41104(a)(17) did not accompany the detention or
23 demurrage charge or that such certification was in-
24 accurate or false, the Commission shall promptly

1 order the refund of any demurrage and detention
2 charges paid.

3 “(3) INVESTIGATION.—Upon receipt of submis-
4 sions under paragraph (1), including the certifi-
5 cation under section 41104(a)(17), the Commission
6 shall promptly investigate the accuracy of such cer-
7 tification with regard to compliance with the provi-
8 sions of part 545 of title 46, Code of Federal Regu-
9 lations.

10 “(4) PENALTIES.—In the event of a finding
11 that the certification under section 41104(a)(17)
12 was inaccurate or false after submission under para-
13 graph (1), penalties under section 41107 shall be
14 applied if the Commission determines such certifi-
15 cation was inaccurate or false due to lack of due
16 care.”.

17 **SEC. 11. INVESTIGATIONS.**

18 Section 41302 of title 46, United States Code, is
19 amended by striking “or agreement” and inserting “agree-
20 ment, fee, or charge”.

21 **SEC. 12. AWARD OF ADDITIONAL AMOUNTS.**

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

24 (1) by inserting “or (c)” after “41102(b)”; and

1 (2) by inserting “or if the Commission deter-
2 mined that a violation of section 41104(a)(17) of
3 this title was made willfully and knowingly,” after
4 “of this title”.

5 **SEC. 13. INJUNCTIVE RELIEF.**

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

8 **SEC. 14. ENFORCEMENT OF REPARATION ORDERS.**

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

11 (1) in subsection (a)—

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

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

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

19 **SEC. 15. NATIONAL SHIPPER ADVISORY COMMITTEE.**

20 (a) NATIONAL SHIPPER ADVISORY COMMITTEE.—
21 Section 42502(c)(3) of title 46, United States Code, is
22 amended by inserting “, including customs brokers or
23 freight forwarders” after “ocean common carriers” each
24 place such term occurs.

1 (b) ANALYSIS.—The analysis for chapter 425 of title
 2 46, United States Code, is amended by inserting before
 3 the item relating to section 42501 the following:

“Sec.”.

4 **SEC. 16. ANNUAL REPORT TO CONGRESS.**

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

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

9 (2) in paragraph (6)—

10 (A) by striking “under this part” and in-
 11 serting “under this chapter”; and

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

14 (3) by adding at the end the following:

15 “(7) an identification of any anticompetitive or
 16 nonreciprocal trade practices by ocean common car-
 17 riers;

18 “(8) an analysis of any trade imbalance result-
 19 ing from the business practices of ocean common
 20 carriers, including an analysis of the data collected
 21 under section 41111; and

22 “(9) an identification of any otherwise con-
 23 cerning practices by ocean common carriers, particu-
 24 larly such carriers that are—

1 “(A) State-owned or State-controlled enter-
 2 prises; or

3 “(B) owned or controlled by, is a sub-
 4 sidiary of, or is otherwise related legally or fi-
 5 nancially (other than a minority relationship or
 6 investment) to a corporation based in a coun-
 7 try—

8 “(i) identified as a nonmarket econ-
 9 omy country (as defined in section 771(18)
 10 of the Tariff Act of 1930 (19 U.S.C.
 11 1677(18))) as of the date of enactment of
 12 this paragraph;

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

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

22 **SEC. 17. TECHNICAL AMENDMENTS.**

23 (a) FEDERAL MARITIME COMMISSION.—The analysis
 24 for chapter 461 of title 46, United States Code, is amend-
 25 ed by striking the first item relating to chapter 461.

1 (b) ADDITIONAL PENALTIES.—Section 41108(a) of
2 title 46, United States Code, is amended by striking “sec-
3 tion 41104(1), (2), or (7)” and inserting “paragraphs (1),
4 (2), or (7) of section 41104(a)”.

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

○