

[DISCUSSION DRAFT]117TH CONGRESS
1ST SESSION**H. R.** _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. GARAMENDI introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend title 46, United States Code, with respect to
prohibited acts by common carriers, 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) in paragraph (3) by inserting “and com-
4 merce” before “needs”; and

5 (3) in paragraph (4) by striking “and by” and
6 all that follows through the period.

7 **SEC. 3. PUBLIC DISCLOSURE.**

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

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

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

17 “(2) all penalties imposed or assessed against
18 common carriers or marine terminal operators, as
19 applicable, under sections 41107, 41108, and
20 41109.”.

21 **SEC. 4. COMMON CARRIERS.**

22 Section 41104 of title 46, United States Code, is
23 amended—

24 (1) in subsection (a)—

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

4 (B) in paragraph (12) by striking “; or”
5 and inserting a semicolon;

6 (C) in paragraph (13) by striking the pe-
7 riod and inserting a semicolon; and

8 (D) by adding at the end the following:

9 “(14) fail to furnish or cause a contractor to
10 fail to furnish the facilities and instrumentalities
11 needed to perform the transportation services, in-
12 cluding containers;

13 “(15) establish rules and practices for the allo-
14 cation and interchange of containers, chassis, or
15 other equipment that unreasonably reduce accessi-
16 bility to such equipment or efficiencies in perform-
17 ance of the transportation services;

18 “(16) fail to establish, observe, and enforce just
19 and reasonable regulations and practices relating to
20 the allocation of vessel space accommodations in
21 consideration of foreseeable import and export de-
22 mands;

23 “(17) unreasonably decline export cargo book-
24 ings if such cargo can be loaded safely and timely

1 and carried on the vessels scheduled for such cargo's
2 immediate destination; or

3 “(18) invoice any party for detention or demur-
4 rage charges, unless accompanied by an accurate
5 certification that such charges comply with—

6 “(A) all provisions of section 545 of title
7 46, Code of Federal Regulations;

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

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

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

16 “(d) APPLICATION OF CERTAIN PROVISIONS.—The
17 prohibition under subsection (a)(18) shall apply to marine
18 terminal operators.

19 “(e) VIOLATION OF PROHIBITION.—Any common
20 carrier or marine terminal operator, if applicable, that vio-
21 lates the prohibitions under paragraph (17) or (18) of sub-
22 section (a) shall be subject to a penalty under sections
23 41108(a).

24 “(f) CERTIFICATION.—Failure to include a certifi-
25 cation under subsection (a)(18) alongside any demurrage

1 or detention charge shall eliminate any obligation of the
2 charged party to pay the applicable charge.

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

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

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

13 “(B) any subsequent rules or regulations
14 concerning demurrage and detention which may
15 be issued by the Commission; and

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

20 “(3) bear the burden of establishing the reason-
21 ableness of any demurrage or detention charges
22 which are the subject of any complaint proceeding
23 challenging a common carrier or marine terminal op-
24 erator demurrage or detention charges as unjust and
25 unreasonable.

1 “(h) RULEMAKING.—

2 “(1) IN GENERAL.—Not later than 60 days
3 after the date of enactment of this subsection, the
4 Commission shall initiate a rulemaking proceeding to
5 establish rules prohibiting common carriers and ma-
6 rine terminal operators from adopting and applying
7 unjust and unreasonable demurrage and detention
8 rules and practices.

9 “(2) CONTENTS.—The rulemaking under para-
10 graph (1) shall address the issues identified in the
11 final rule published on May 18, 2020, titled ‘Inter-
12 pretive Rule on Demurrage and Detention Under
13 the Shipping Act’ (85 Fed. Reg. 29638), including
14 the following:

15 “(A) Establishing clear and uniform defini-
16 tions for demurrage, detention, cargo avail-
17 ability for retrieval and associated free time,
18 and other terminology used in the rule. The
19 definition for cargo availability for retrieval
20 shall account for government inspections.

21 “(B) Establishing that demurrage and de-
22 tention rules are not independent revenue
23 sources but incentivize efficiencies in the ocean
24 transportation network, including the retrieval
25 of cargo and return of equipment.

1 “(C) Prohibiting the consumption of free
2 time or collection of demurrage and detention
3 charges when obstacles to the cargo retrieval or
4 return of equipment are within the scope of re-
5 sponsibility of the carrier or their agent and be-
6 yond the control of the invoiced or contracting
7 party.

8 “(D) Prohibiting the commencement or
9 continuation of free time unless cargo is avail-
10 able for retrieval and timely notice of cargo
11 availability has been provided.

12 “(E) Prohibiting the consumption of free
13 time or collection of demurrage charges when
14 marine terminal appointments are not available
15 during the free time period.

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

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

22 “(i) cargo availability after vessel dis-
23 charge;

24 “(ii) container return locations; and

1 “(iii) advance notice for container
2 early return dates.

3 “(H) Establishing minimum billing re-
4 quirements, including timeliness and supporting
5 information that shall be included in or with in-
6 voices for demurrage and detention charges
7 that will allow the invoiced party to validate the
8 charges.

9 “(I) Requiring common carriers and ma-
10 rine terminal operators to establish reasonable
11 dispute resolution policies and practices.

12 “(J) Establishing the responsibilities of
13 shippers, receivers, and draymen with respect to
14 cargo retrieval and equipment return.

15 “(i) MINIMUM SERVICE STANDARDS.—

16 “(1) IN GENERAL.—A common carrier shall be
17 obligated to adhere to minimum service standards
18 that meet the public interest.

19 “(2) RULEMAKING.—Not later than 90 days
20 after the date of enactment of this subsection, the
21 Commission shall initiate a rulemaking proceeding to
22 incorporate paragraph (1) of this subsection and
23 subsections (d) through (h) and shall include the fol-
24 lowing:

1 “(A) The obligation to adopt reasonable
2 rules and practices related to or connected with
3 the furnishing and allocation of adequate and
4 suitable equipment, vessel space accommoda-
5 tions, and other instrumentalities necessary for
6 the receiving, loading, carriage, unloading and
7 delivery of cargo.

8 “(B) The duty to perform the contract of
9 carriage with reasonable dispatch.

10 “(C) The requirement to carry United
11 States export cargo if such cargo can be safely
12 and timely loaded on vessels scheduled for such
13 cargo’s destination.

14 “(D) The requirement of ocean common
15 carriers to establish contingency service plans
16 to address and mitigate service disruptions and
17 inefficiencies during periods of port congestion
18 and other market disruptions.”.

19 **SEC. 5. ASSESSMENT OF PENALTIES; REPARATIONS.**

20 (a) IN GENERAL.—Section 41109 of title 46, United
21 States Code, is amended by striking subsection (c).

22 (b) RETENTION OF FUNDS.—Chapter 411 of title 46,
23 United States Code, is amended by adding at the end the
24 following:

1 **“§ 41110. Retention of funds; reparations**

2 “Notwithstanding any other provision of law, the
3 Federal Maritime Commission may, without further ap-
4 propriation—

5 “(1) retain any penalties collected or assessed
6 under sections 41107, 41108, and 41109; and

7 “(2) award any penalties retained under para-
8 graph (1) as reparations under section 41305 on a
9 case-by-case basis, if the Commission determines
10 that such awards are in the public interest.”.

11 (c) CLERICAL AMENDMENT.—The analysis for chap-
12 ter 411 of title 46, United States Code, is amended by
13 adding at the end the following:

“41110. Retention of funds; reparations.”.

14 **SEC. 6. DATA COLLECTION.**

15 (a) IN GENERAL.—Chapter 411 of title 46, United
16 States Code, is further amended by adding at the end the
17 following:

18 **“§ 41111. Data collection**

19 “(a) IN GENERAL.—Common carriers covered under
20 this chapter shall submit to the Federal Maritime Com-
21 mission a calendar quarterly report that describes the
22 total import and export tonnage per vessel (making port
23 in the United States, including any territory or possession
24 of the United States) operated by such common carrier.

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

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

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

14 (b) CLERICAL AMENDMENT.—The analysis for chap-
15 ter 411 of title 46, United States Code, is further amend-
16 ed by adding at the end the following:

“41111. Data collection.”.

17 (c) ANNUAL REPORT.—Section 46106(b) of title 46,
18 United States Code, is amended—

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

21 (2) in paragraph (6) by striking the period and
22 inserting “; and”; and

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

24 “(7) an identification of any anticompetitive or
25 nonreciprocal trade practices by ocean carriers.”.

1 **SEC. 7. COMPLAINTS.**

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

4 (1) in subsection (a)—

5 (A) by striking “except section
6 41307(b)(1)” and insert “including section
7 41307(b)(1)”; and

8 (B) by inserting “A person may file with
9 the Federal Maritime Commission a sworn com-
10 plaint alleging a violation of this part.” after
11 “the violation.”; and

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

13 “(d) COMPLAINTS REGARDING CERTIFIED DEMUR-
14 RAGE OR DETENTION CHARGES.—

15 “(1) IN GENERAL.—Not later than 60 days
16 after the date of enactment of this subsection, the
17 Federal Maritime Commission shall develop an expe-
18 dited informal process to receive submissions of in-
19 formation concerning demurrage or detention
20 charges which were, or were required to be, certified
21 pursuant to section 41104(a)(18). The informal
22 process shall only require submission of the bill of
23 lading numbers and the applicable carrier certifi-
24 cations.

25 “(2) REFUND.—Upon receipt of submissions
26 under paragraph (1), if the Commission determines

1 that the certification of the carrier under section
2 41104(a)(18) did not accompany the detention of
3 demurrage charge, the Commission shall promptly
4 order the refund of any demurrage and detention
5 charges paid.

6 “(3) INVESTIGATION.—Upon receipt of submis-
7 sions under paragraph (1), including the certifi-
8 cation under section 41104(a)(18), the Commission
9 shall promptly investigate the accuracy of such cer-
10 tification with regard to compliance with the provi-
11 sions of part 545 of title 46, Code of Federal Regu-
12 lations;

13 “(4) PENALTIES.—In the event of a finding
14 that the certification under section 41104(a)(18)
15 was inaccurate or false after submission under para-
16 graph (1), penalties under section 41107 shall be
17 applied.”.

18 **SEC. 8. INVESTIGATIONS.**

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

22 **SEC. 9. INJUNCTIVE RELIEF.**

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

1 **SEC. 10. NATIONAL SHIPPER ADVISORY COMMITTEE.**

2 Section 42502(c)(3) of title 46, United States Code,
3 is amended by inserting “, including customs brokers or
4 freight forwarders” after “ocean common carriers” each
5 place such term occurs.

6 **SEC. 11. EXPORT OPPORTUNITIES; RECIPROCAL TRADE.**

7 (a) IN GENERAL.—Chapter 461 of title 46, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 **“§ 46109. Ensuring export opportunities; promoting**
11 **reciprocal trade**

12 “In carrying out this chapter and subtitle IV, the
13 Federal Maritime Commission shall, to the greatest extent
14 practicable—

15 “(1) ensure export opportunities for United
16 States exporters; and

17 “(2) promote reciprocal trade in foreign com-
18 merce.”.

19 (b) CLERICAL AMENDMENT.—The analysis for chap-
20 ter 461 of title 46, United States Code, is amended by
21 adding at the end the following:

“46109. Ensuring export opportunities; promoting reciprocal trade.”.