AMENDMENT TO RULES COMMITTEE PRINT

117–31

OFFERED BY MR. GARAMENDI OF CALIFORNIA

Add at the end the following:

DIVISION M—OCEAN SHIPPING
REFORM

SEC. 120001. PURPOSES.

Section 40101 of title 46, United States Code, is amended by striking paragraphs (2) through (4) and inserting the following:

“(2) ensure an efficient and competitive transportation system for the common carriage of goods by water in the foreign commerce of the United States that is, as far as possible, in harmony with fair and equitable international shipping practices;

“(3) encourage the development of a competitive and efficient liner fleet of vessels of the United States capable of meeting national security and commerce needs of the United States;

“(4) support the growth and development of United States exports through a competitive and efficient system for the common carriage of goods by water in the foreign commerce of the United States.
and by placing a greater reliance on the market-place; and

“(5) promote reciprocal trade in the common carriage of goods by water in the foreign commerce of the United States.”.

SEC. 120002. 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.—With respect to service contracts entered into under this section, a common carrier shall establish, observe, and enforce just and reasonable regulations and practices relating to essential terms and minimum contract requirements the Commission determines are necessary or appropriate under subsection (c)(9).”.
SEC. 120003. 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 documents as the Commission, by rule, may prescribe as necessary 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 Commission finds that the shipping exchange is subject to comparable, 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 for registered national shipping exchanges, including the minimum requirements for service contracts established under section 40502, and issue licenses for registered national shipping exchanges.

“(e) DEFINITION.—In this subsection, the term ‘shipping exchange’ means a platform, digital, over-the-counter or otherwise, which connects shippers with common carriers (both vessel-operating and non-vessel-operating) for the purpose of entering into underlying agreements or contracts for the transport of cargo, by vessel or other modes of transportation.”.

(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 regulations required under subsection (d) of such section.

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

“40504. Shipping exchange registry.”.

SEC. 120004. 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 U.S. 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. 120005. 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. 120006. ANNUAL REPORT AND PUBLIC DISCLOSURES.

(a) Report on Foreign Laws and Practices.—

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 chapter 403”; 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 41110; 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 (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).”.

(b) PUBLIC DISCLOSURE.—

(1) IN GENERAL.—Section 46106 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)(15) 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.”.

(2) CONFORMING AND CLERICAL AMENDMENTS.—

(A) CONFORMING AMENDMENT.—The heading for section 46106 of title 46, United States Code, is amended by inserting “and public disclosure” after “report”.


(B) CLERICAL AMENDMENT.—The analysis for chapter 461 of title 46, United States Code, is amended by striking the item related to section 46106 and inserting the following:

"46106. Annual report and public disclosure."

SEC. 120007. GENERAL PROHIBITIONS.

Section 41102 of title 46, United States Code, is amended by adding 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, has filed a complaint, or for any other reason.

“(e) CERTIFICATION.—A common carrier or marine terminal operator shall not charge any other person demurrage or detention charges under a tariff, marine terminal schedule, service contract, or any other contractual obligation unless accompanied by an accurate certification that such charges comply with all rules and regulations concerning demurrage or detention issued by the Commission. The certification requirement only applies to the en-
tity that establishes the charge, and a common carrier or marine terminal operator that collects a charge on behalf of another common carrier or marine terminal operator is not responsible for providing the certification, except that an invoice from a common carrier or marine terminal operator collecting a charge on behalf of another must include a certification from the party that established the charge.”.

**SEC. 120008. PROHIBITION ON UNREASONABLY DECLINING CARGO.**

(a) **UNREASONABLY DECLINING CARGO.**—Section 41104 of title 46, United States Code, is amended in subsection (a)—

(1) by striking paragraph (3) and inserting the following:

“(3) engage in practices that unreasonably reduce shipper accessibility to equipment necessary for the loading or unloading of cargo;”;

(2) in paragraph (12) by striking “; or” and inserting a semicolon;

(3) in paragraph (13) by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

“(14) fail to furnish or cause a contractor to fail to furnish containers or other facilities and in-
strumentalities needed to perform transportation services, including allocation of vessel space accommodations, in consideration of reasonably foreseeable import and export demands; or

“(15) unreasonably decline export cargo bookings if such cargo can be loaded safely and timely, as determined by the Commandant of the Coast Guard, and carried on a vessel scheduled for the immediate destination of such cargo.”.

(b) RULEMAKING ON UNREASONABLY DECLINING CARGO.—

(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 the term “unreasonably decline” for the purposes of subsection (a)(15) of section 41104 of title 46, United States Code (as added by subsection (a)).

(2) CONTENTS.—The rulemaking under paragraph (1) shall address the unreasonableness of ocean common carriers prioritizing the shipment of empty containers while excluding, limiting, or otherwise 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. 120009. DETENTION AND DEMURRAGE.

(a) In General.—Section 41104 of title 46, United
States Code, is further amended by adding at the end the
following:

“(d) Certification.—Failure of a common carrier
to include a certification under section 41102(e) alongside
any demurrage or detention charge shall eliminate any ob-
ligation of the charged party to pay the applicable charge.

“(e) 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 op-
erator, shall—

“(1) act in a manner consistent with any rules
or regulations concerning demurrage or detention
issued by the Commission;

“(2) maintain all records supporting the assess-
ment 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 reason-
ableness 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.

“(f) Penalties for False or Inaccurate Certified Demurrage or Detention Charges.—In the event of a finding that the certification under section 41102(e) was inaccurate, or false after submission under section 41301, penalties under section 41107 shall be applied if the Commission determines, in a separate enforcement proceeding, such certification was inaccurate or false.”.

(b) Rulemaking on Detention and Demurrage.—

(1) In general.—Not later than 120 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 defini-
tions for demurrage, detention, cargo avail-
ability 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 de-
tention 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 re-
sponsibility of the carrier or their agent and be-
yond the control of the invoiced or contracting
party.

(D) Prohibiting the commencement or con-
tinuation of free time unless cargo is available
for retrieval and timely notice of cargo avail-
ability 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 containers 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 discharge;

(ii) container return locations; and

(iii) advance notice for container early return dates.

(H) Establishing minimum billing requirements, including timeliness and supporting information that shall be included in or with invoices 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 dispute resolution policies and practices.
(J) Establishing the responsibilities of shippers, receivers, and draymen with respect to cargo retrieval and equipment return.

(K) Clarifying rules for 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 (f) of 41104 of title 46, United States Code, which 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, containers, 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, as determined by the Commandant of the Coast Guard, 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 disruptions.

SEC. 120010. ASSESSMENT OF PENALTIES.
(a) ASSESSMENT OF PENALTIES.—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”;
(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”.
(b) ADDITIONAL PENALTIES.—Section 41108(a) of title 46, United States Code, is amended by striking “section 41104(1), (2), or (7)” and inserting “subsections (d) or (e) of section 41102 or paragraph (1), (2), (7), (14), or (15) of section 41104(a)”.

(c) CONFORMING AMENDMENT.—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”.

(d) AWARD OF REPARATIONS.—Section 41305(c) of title 46, United States Code, is amended—

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

(2) by inserting “, or if the Commission determines that a violation of section 41102(e) was made willfully or knowingly” after “of this title”.

SEC. 120011. INVESTIGATIONS.

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

January 31, 2022 (1:27 p.m.)
SEC. 120012. INJUNCTIVE RELIEF.
Section 41307(b) to title 46, United States Code, is amended—
(1) in paragraph (3)—
(A) in the heading by striking “AND THIRD PARTIES”; and
(B) by striking the second sentence; and
(2) by adding at the end the following:
“(5) THIRD PARTY INTERVENTION.—The court may allow a third party to intervene in a civil action brought under this section.”.

SEC. 120013. 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) 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)”.
(c) NATIONAL SHIPPER ADVISORY COMMITTEE.—Section 42502(c)(3) of title 46, United States Code is amended by striking “REPRESENTATION” and all that follows through “Members” and inserting “REPRESENTATION.—Members”.

SEC. 120014. AUTHORIZATION OF APPROPRIATIONS.

Section 46108 of title 46, United States Code, is amended by striking “$29,086,888 for fiscal year 2020 and $29,639,538 for fiscal year 2021” and inserting “$32,603,492 for fiscal year 2022 and $35,863,842 for fiscal year 2023”.

SEC. 120015. NAS STUDY ON SUPPLY CHAIN INDUSTRY.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall seek to enter into an agreement with the National Academy of Sciences under which the National Academy shall conduct a study on the United States supply chain that examines data constraints that impede the flow of maritime cargo and add to supply chain inefficiencies and that identifies data sharing systems that can be employed to improve the functioning of the United States supply chain.

(b) CONTENTS.—The study required under subsection (a) shall include—

(1) the identification of where bottlenecks or chokepoints are most prominent within the United States supply chain;

(2) the identification of what common shipping data is created with each hand-off of a container through the United States supply chain and how such data is stored and shared;
(3) the identification of critical data elements used by any entity covered by subsection (c), including the key elements used for various supply chain business processes;

(4) a review of the methodology used to store, access, and disseminate shipping data across the United States supply chain and evaluation of the inefficiencies in such methodology;

(5) an analysis of existing and potential impediments to the free flow of information among entities covered by subsection (c), including—

(A) identification of barriers that prevent carriers, terminals, and shippers from having access to commercial data; and

(B) any inconsistencies in—

(i) terminology used across data elements connected to the shipment, arrival, and unloading of a shipping container; and

(ii) the classification systems used across the United States supply chain, including inconsistencies in the names of entities covered by subsection (c), geographical names, and terminology;

(6) the identification of information to be included in an improved data sharing system designed
to plan, execute, and monitor the optimal loading
and unloading of maritime cargo; and

(7) the identification of existing software and
data sharing platforms available to facilitate propa-
gation of information to all agents involved in the
loading and unloading of maritime cargo and evalu-
ate the effectiveness of such software and platforms
if implemented.

(e) COLLECTION OF INFORMATION.—In conducting
the study required under subsection (a), the National
Academy of Sciences shall collect information from—

(1) vessel operating common carriers and non-
vessel operating common carriers;

(2) marine terminal operators;

(3) commercial motor vehicle operators;

(4) railroad carriers;

(5) chassis providers;

(6) ocean transportation intermediaries;

(7) custom brokers;

(8) freight forwarders;

(9) shippers and cargo owners;

(10) the National Shipper Advisory Committee;

(11) relevant government agencies, such as the
Federal Maritime Commission, the Surface Trans-
portation Board, and the United States Customs
and Border Protection;

(12) to the extent practicable, representatives of
foreign countries and maritime jurisdictions outside
of the United States; and

(13) any other entity involved in the transpor-
tation of ocean cargo and the unloading of cargo
upon arrival at a port.

(d) FACILITATION OF DATA SHARING.—In carrying
out the study under subsection (a), the National Academy
of Sciences may solicit information from any relevant
agency relating to the United States supply chain.

(e) REPORT.—Not later than 18 months after enter-
ing into an arrangement with the Secretary under sub-
section (a), the National Academy of Sciences shall submit
to the Committee on Transportation and Infrastructure
of the House of Representatives and the Committee on
Commerce, Science, and Transportation of the Senate,
and make available on a publicly accessible website, a re-
port containing—

(1) the study required under subsection (a);

(2) the information collected under subsections
(b) and (e), excluding any personally identifiable in-
formation or sensitive business information; and

(3) any recommendations for—
(A) common data standards to be used in
the United States supply chain; and
(B) policies and protocols that would
streamline information sharing across the
United States supply chain.

SEC. 120016. TEMPORARY EMERGENCY AUTHORITY.

(a) Public Input on Information Sharing.—

(1) In General.—Not later than 30 days after
the date of enactment of this Act, the Federal Mariti-
time Commission shall issue a request for informa-
tion seeking public comment regarding—

(A) whether congestion of the common car-
riage of goods has created an emergency situa-
tion of a magnitude such that there exists a
substantial adverse effect on the competi-
tiveness and reliability of the international ocean
transportation supply system;

(B) whether an emergency order described
in subsection (b) would alleviate such an emer-
gency situation; and

(C) the appropriate scope of such an emer-
gency order, if applicable.

(2) Consultation.—During the public com-
ment period under paragraph (1), the Commission
may consult, as the Commission determines to be appropriate, with—

(A) other Federal departments and agencies; and

(B) persons with expertise relating to maritime and freight operations.

(b) Authority to Issue Emergency Order Requiring Information Sharing.—On making a unanimous determination described in subsection (c), the Commission may issue an emergency order requiring any common carrier or marine terminal operator to share directly with relevant shippers, rail carriers, or motor carriers information relating to cargo throughput and availability, in order to ensure the efficient transportation, loading, and unloading of cargo to or from—

(1) any inland destination or point of origin;

(2) any vessel; or

(3) any point on a wharf or terminal.

(c) Description of Determination.—

(1) In General.—A determination referred to in subsection (b) is a unanimous determination by the Commission that congestion of common carriage of goods has created an emergency situation of a magnitude such that there exists a substantial adverse effect on the competitiveness and reliability of
the international ocean transportation supply sys-

(2) FACTORS FOR CONSIDERATION.—In issuing
an emergency order under subsection (b), the Com-
mission shall ensure that such order includes param-
eters relating to temporal and geographic scope, tak-
ing into consideration the likely burdens on ocean
carriers and marine terminal operators and the like-
ly benefits on congestion relating to the purposes de-
dscribed in section 40101 of title 46, United States
Code.

(d) PETITIONS FOR EXCEPTION.—

(1) IN GENERAL.—A common carrier or marine
terminal operator subject to an emergency order
issued under this section may submit to the Com-
mission a petition for exception from 1 or more re-
quirements of the emergency order, based on a
showing of undue hardship or other condition ren-
dering compliance with such a requirement imprac-
tical.

(2) DETERMINATION.—Not later than 21 days
after the date on which a petition for exception
under paragraph (1) is submitted, the Commission
shall determine whether to approve or deny such pe-
tition by majority vote.
(3) Inapplicability Pending Review.—The requirements of an emergency order that is the subject of a petition for exception under this subsection shall not apply to a petitioner during the period for which the petition is pending.

(e) Limitations.—

(1) Term.—An emergency order issued under this section shall remain in effect for a period of not longer than 60 days.

(2) Renewal.—The Commission may renew an emergency order issued under this section for an additional term by a unanimous determination by the Commission.

(f) Sunset.—The authority provided by this section shall terminate on the date that is 2 years after the date of enactment of this Act.

(g) Definitions.—In this section:

(1) Common Carrier.—The term “common carrier” has the meaning given such term in section 40102 of title 46, United States Code.

(2) Motor Carrier.—The term “motor carrier” has the meaning given such term in section 13102 of title 49, United States Code.
(3) RAIL CARRIER.—The term “rail carrier” has the meaning given such term in section 10102 of title 49, United States Code.

(4) SHIPPER.—The term “shipper” has the meaning given such term in section 40102 of title 46, United States Code.