

104TH CONGRESS
1ST SESSION

S. 1356

To amend the Shipping Act of 1984 to provide for ocean shipping reform,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 1995

Mr. PRESSLER introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Shipping Act of 1984 to provide for ocean
shipping reform, 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 1995”.

6 **TITLE I—OCEAN SHIPPING**
7 **REFORM**

8 **SEC. 101. PURPOSES.**

9 Section 2 of the Shipping Act of 1984 (46 U.S.C.
10 App. 1701) is amended—

1 (1) by striking “and” at the end of paragraph
2 (2);

3 (2) by striking the period at the end of para-
4 graph (3) and inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(4) to permit carriers and shippers to develop
8 transportation arrangements to meet their specific
9 needs.”.

10 **SEC. 102. DEFINITIONS.**

11 Section 3 of the Shipping Act of 1984 (46 U.S.C.
12 App. 1702) is amended—

13 (1) effective January 1, 1997—

14 (A) by striking paragraph (9); and

15 (B) by redesignating paragraphs (10)
16 through (19) as paragraphs (9) through (18),
17 respectively; and

18 (2) effective June 1, 1997—

19 (A) by striking paragraph (4);

20 (B) in paragraph (7), by striking “a com-
21 mon tariff;” and inserting “a common schedule
22 of transportation rates, charges, classifications,
23 rules, and practices;”;

24 (C) by striking paragraph (10) (as redesign-
25 nated by paragraph (1) of this section);

1 (D) by striking paragraph (13) (as redesignated by paragraph (1) of this section);

2
3 (E) by striking paragraph (16) (as redesignated by paragraph (1) of this section);

4
5 (F) by striking paragraph (18) (as redesignated by paragraph (1) of this section) and inserting the following:

6
7
8 “(18) ‘ocean freight forwarder’ means a person
9 that—

10 “(A)(i) in the United States, dispatches
11 shipments from the United States via a common carrier and books or otherwise arranges
12 space for those shipments on behalf of shippers;
13 or
14

15 “(ii) processes the documentation or performs related activities incident to those shipments; or
16
17

18 “(B) acts as a common carrier that does
19 not operate the vessels by which the ocean transportation is provided, and is a shipper in
20 its relationship with an ocean common carrier.”;

21
22
23 (G) by striking paragraph (21);

24 (H) in paragraph (23)—

1 (i) by striking “or” the second place
2 it appears and inserting a comma; and

3 (ii) by striking the period and insert-
4 ing “, a shippers’ association, or an ocean
5 freight forwarder that accepts responsibil-
6 ity for payment of the ocean freight.”;

7 (I) by striking paragraph (24) and insert-
8 ing the following:

9 “(24) ‘shippers’ association’ means a group of
10 shippers that consolidates or distributes freight, on
11 a nonprofit basis for the members of the group in
12 order to secure carload, truckload, or other volume
13 rates or ocean transportation contracts.”;

14 (J) by inserting after paragraph (18) (as
15 redesignated by paragraph (1) of this section)
16 the following:

17 “(19) ‘ocean transportation contract’ means a
18 contract in writing separate from the bill of lading
19 or receipt between 1 or more common carriers or a
20 conference and 1 or more shippers to provide speci-
21 fied services under specified rates and conditions.”;

22 (K) by redesignating paragraphs (5)
23 through (9) as paragraphs (4) through (8), re-
24 spectively;

1 (L) by redesignating paragraphs (11) and
2 (12) (as redesignated by paragraph (1) of this
3 section) as paragraphs (9) and (10), respec-
4 tively;

5 (M) by redesignating paragraphs (14) and
6 (15) (as redesignated by paragraph (1) of this
7 section) as paragraphs (11) and (12), respec-
8 tively;

9 (N) by redesignating paragraph (17) (as
10 redesignated by paragraph (1) of this section)
11 as paragraph (13);

12 (O) by redesignating paragraph (18) (as
13 amended by subparagraph (F) of this sub-
14 section) as paragraph (14);

15 (P) by redesignating paragraph (19) (as
16 amended by subparagraph (J) of this sub-
17 section) as paragraph (15);

18 (Q) by redesignating paragraph (20) as
19 paragraph (16); and

20 (R) by redesignating paragraphs (22)
21 through (27) as paragraphs (17) through (22),
22 respectively.

23 **SEC. 103. AGREEMENTS WITHIN THE SCOPE OF THE ACT.**

24 Effective June 1, 1997, section 4(a) of the Shipping
25 Act of 1984 (46 U.S.C. App. 1703(a)) is amended—

1 (1) in paragraph (5), by striking “non-vessel-
2 operating common carriers” and inserting “ocean
3 freight forwarders”; and

4 (2) by striking paragraph (7) and inserting the
5 following:

6 “(7) discuss any matter related to ocean trans-
7 portation contracts, and enter ocean transportation
8 contracts and agreements related to those con-
9 tracts.”.

10 **SEC. 104. AGREEMENTS.**

11 Section 5 of the Shipping Act of 1984 (46 U.S.C.
12 App. 1704) is amended—

13 (1) effective January 1, 1997—

14 (A) in subsection (b)(4), by striking “at
15 the request of any member, require an inde-
16 pendent neutral body to police fully” and in-
17 serting “state the provisions, if any, for the po-
18 licing of”;

19 (B) in subsection (b)(7), by striking “and”
20 at the end;

21 (C) in subsection (b)(8), by striking the
22 period and inserting “; and”; and

23 (D) by adding at the end of subsection (b)
24 the following new paragraph:

1 “(9) provide that a member of the conference
2 may enter individual and independent negotiations
3 and may conclude individual and independent service
4 contracts under section 8.”;

5 (2) effective June 1, 1997—

6 (A) by striking subsection (b)(8) and in-
7 serting the following:

8 “(8) provide that any member of the conference
9 may take independent action on any rate or service
10 item agreed upon by the conference for transpor-
11 tation provided under section 8(a) upon not more
12 than 3 business days’ notice to the conference, and
13 that the conference will provide the new rate or serv-
14 ice item for use by that member, effective no later
15 than 3 business days after receipt of that notice, and
16 by any other member that notifies the conference
17 that it elects to adopt the independent rate or serv-
18 ice item on or after the effective date of that new
19 rate or service item, in lieu of the existing con-
20 ference provision for that rate or service item;”;

21 (B) in subsection (b)(9) (as added by para-
22 graph (1) of this subsection)—

23 (i) by striking “service” and inserting
24 “ocean transportation”; and

1 (ii) by striking the period at the end
2 and inserting “; and”;

3 (C) by adding at the end of subsection (b)
4 the following:

5 “(10) prohibit the conference from—

6 “(A) prohibiting or restricting the mem-
7 bers of the conference from engaging in individ-
8 ual negotiations for ocean transportation con-
9 tracts under section 8(b) with 1 or more ship-
10 pers; and

11 “(B) issuing mandatory rules or require-
12 ments affecting ocean transportation contracts
13 that may be entered by 1 or more members of
14 the conference, except that a conference may
15 require that a member of the conference dis-
16 close the existence of an existing individual
17 ocean transportation contract or negotiations on
18 an ocean transportation contract, when the con-
19 ference enters negotiations on an ocean trans-
20 portation contract with the same shipper.”; and

21 (D) in subsection (e), by striking “carrier
22 that are required to be set forth in a tariff,”
23 and inserting “carrier”.

1 **SEC. 105. EXEMPTION FROM ANTITRUST LAWS.**

2 Section 7 of the Shipping Act of 1984 (46 U.S.C.
3 App. 1706) is amended—

4 (1) by striking subsection (a)(6) and inserting
5 the following:

6 “(6) subject to section 20(e)(2), any agreement,
7 modification, or cancellation, in effect before the ef-
8 fective date of this Act and any tariff, rate, fare,
9 charge, classification, rule, or regulation explanatory
10 thereof implementing that agreement, modification,
11 or cancellation.”; and

12 (2) in subsection (c)(1), by striking “agency”
13 and inserting “agency, department,”.

14 **SEC. 106. COMMON AND CONTRACT CARRIAGE.**

15 (a) IN GENERAL.—Effective June 1, 1997—

16 (1) section 502 of the High Seas Driftnet Fish-
17 eries Enforcement Act (46 U.S.C. App. 1707a) is re-
18 pealed; and

19 (2) section 8 of the Shipping Act of 1984 (46
20 U.S.C. App. 1707) is amended to read as follows:

21 **“SEC. 8. COMMON AND CONTRACT CARRIAGE.**

22 “(a) COMMON CARRIAGE.—

23 “(1) A common carrier and a conference shall
24 make available a schedule of transportation rates
25 which shall include the rates, terms, and conditions
26 for transportation services not governed by an ocean

1 transportation contract, and shall provide the sched-
2 ule of transportation rates, in writing, upon the re-
3 quest of any person. A common carrier and a con-
4 ference may assess a reasonable charge for comply-
5 ing with a request for a rate, term, or condition, ex-
6 cept that the charge may not exceed the cost of pro-
7 viding the information requested.

8 “(2) A dispute between a common carrier or
9 conference and a person as to the applicability of the
10 rates, terms, and conditions for ocean transportation
11 services shall be decided in an appropriate State or
12 Federal court of competent jurisdiction, unless the
13 parties otherwise agree.

14 “(3) A claim concerning a rate for ocean trans-
15 portation services which involves false billing, false
16 classification, false weighing, false report of weight,
17 or false measurement shall be decided in an appro-
18 priate State or Federal court of competent jurisdic-
19 tion, unless the parties otherwise agree.

20 “(b) CONTRACT CARRIAGE.—

21 “(1) 1 or more common carriers or a conference
22 may enter into an ocean transportation contract
23 with 1 or more shippers. A common carrier may
24 enter into ocean transportation contracts without
25 limitations concerning the number of ocean trans-

1 portation contracts or the amount of cargo or space
2 involved. The status of a common carrier as an
3 ocean common carrier is not affected by the number
4 or terms of ocean transportation contracts entered.

5 “(2) A party to an ocean transportation con-
6 tract entered under this section shall have no duty
7 in connection with services provided under the con-
8 tract other than the duties specified by the terms of
9 the contract.

10 “(3)(A) An ocean transportation contract or the
11 transportation provided under that contract may not
12 be challenged in any court on the grounds that the
13 contract violates a provision of this Act.

14 “(B) The exclusive remedy for an alleged
15 breach of an ocean transportation contract is an ac-
16 tion in an appropriate State or Federal court of
17 competent jurisdiction, unless the parties otherwise
18 agree.

19 “(4) The requirements and prohibitions con-
20 cerning contracting by conferences contained in
21 paragraphs (9) and (10) of section 5(b) shall also
22 apply to any agreement among one or more ocean
23 common carriers that is filed under section 5(a).”.

24 (b) CONFIDENTIALITY OF CONTRACTS.—Effective
25 January 1, 1998, section 8(b) of the Shipping Act of 1984

1 (46 U.S.C. App. 1707(b)), as amended by subsection (a)
2 of this section, is further amended by adding at the end
3 the following new paragraph:

4 “(5) A contract entered under this section may
5 be made on a confidential basis, upon agreement of
6 the parties. An ocean common carrier that is a
7 member of a conference agreement may not be pro-
8 hibited or restricted from agreeing with 1 or more
9 shippers that the parties to the contract will not dis-
10 close the rates, services, terms, or conditions of that
11 contract to any other member of the agreement, to
12 the conference, to any other carrier, shipper, con-
13 ference, or to any other third party.”.

14 **SEC. 107. PROHIBITED ACTS.**

15 Section 10 of the Shipping Act of 1984 (46 U.S.C.
16 App. 1709) is amended—

17 (1) effective January 1, 1997, in subsection
18 (b)—

19 (A) by striking paragraph (1) and insert-
20 ing the following:

21 “(1) except for service contracts, subject a per-
22 son, place, port, or shipper to unreasonable discrimi-
23 nation;”;

24 (B) by striking paragraphs (2), (3), (4),
25 and (8);

1 (C) by redesignating paragraphs (5)
2 through (7) as paragraphs (2) through (4), re-
3 spectively; and

4 (D) by redesignating paragraphs (9)
5 through (16) as paragraphs (5) through (12),
6 respectively;

7 (2) effective June 1, 1997, by striking sub-
8 section (b) and inserting the following:

9 “(b) COMMON CARRIERS.—No common carrier, ei-
10 ther alone or in conjunction with any other person, directly
11 or indirectly, may—

12 “(1) except for ocean transportation contracts,
13 subject a person, place, port, or shipper to unreason-
14 able discrimination;

15 “(2) retaliate against any shipper by refusing,
16 or threatening to refuse, cargo space accommoda-
17 tions when available, or resort to other unfair or un-
18 justly discriminatory methods because the shipper
19 has patronized another carrier or has filed a com-
20 plaint, or for any other reason;

21 “(3) employ any fighting ship;

22 “(4) subject any particular person, locality,
23 class, or type of shipper or description of traffic to
24 an unreasonable refusal to deal;

1 “(5) refuse to negotiate with a shippers’ asso-
2 ciation;

3 “(6) knowingly and willfully accept cargo from
4 or transport cargo for the account of an ocean
5 freight forwarder that does not have a bond, insur-
6 ance, or other surety as required by section 19;

7 “(7) knowingly and willfully enter into an ocean
8 transportation contract with an ocean freight for-
9 warder or in which an ocean freight forwarder is
10 listed as an affiliate that does not have a bond, in-
11 surance, or other surety as required by section 19;
12 or

13 “(8)(A) knowingly disclose, offer, solicit, or re-
14 ceive any information concerning the nature, kind,
15 quantity, destination, consignee, or routing of any
16 property tendered or delivered to a common carrier
17 without the consent of the shipper or consignee if
18 that information—

19 “(i) may be used to the detriment or preju-
20 dice of the shipper or consignee;

21 “(ii) may improperly disclose its business
22 transaction to a competitor; or

23 “(iii) may be used to the detriment or prej-
24 udice of any common carrier;

1 except that nothing in this paragraph shall be con-
2 strued to prevent providing the information, in re-
3 sponse to legal process, to the United States, or to
4 an independent neutral body operating within the
5 scope of its authority to fulfill the policing obliga-
6 tions of the parties to an agreement effective under
7 this Act, and no ocean common carrier that is a
8 party to a conference agreement approved under this
9 Act, receiver, trustee, lessee, agent, or employee of
10 that carrier, or any other person authorized by that
11 carrier to receive information, shall be prohibited
12 from giving information to the conference or any
13 person, firm, corporation, or agency designated by
14 the conference or to prevent the conference or its
15 designee from soliciting or receiving information for
16 the purpose of determining whether a shipper or
17 consignee has breached an agreement with a con-
18 ference or for the purpose of determining whether a
19 member of the conference has breached the con-
20 ference agreement or for the purpose of compiling
21 statistics of cargo movement (but the use of that in-
22 formation for any other purpose prohibited by this
23 Act or any other provision of law is prohibited); and
24 “(B) after December 31, 1997, the rates, serv-
25 ices, terms, and conditions of an ocean transpor-

1 tation contract may not be disclosed under this
2 paragraph if the contract has been made on a con-
3 fidential basis under section 8(b).

4 The exclusive remedy for a disclosure under this para-
5 graph shall be an action for breach of contract as provided
6 in section 8(b)(3).”;

7 (3) effective June 1, 1997—

8 (A) by striking subsection (c)(1) and in-
9 serting the following:

10 “(1) boycott, take any concerted action result-
11 ing in an unreasonable refusal to deal, or implement
12 a policy or practice that results in an unreasonable
13 refusal to deal;”;

14 (B) in subsection (c)(5), by inserting “as
15 defined in section 3(14)(A)” after “freight for-
16 warder”; and

17 (C) in subsection (c)(6), by striking “a
18 service contract.” and inserting “an ocean
19 transportation contract.”; and

20 (4) effective June 1, 1997, in subsection (d)(3),
21 by striking “subsection (b) (11), (12), and (16) of
22 this section” and inserting “paragraphs (1), (4), and
23 (8) of subsection (b)”.

1 **SEC. 108. REPARATIONS.**

2 Effective June 1, 1997, section 11(g) of the Shipping
3 Act of 1984 (46 U.S.C. App. 1710(g)) is amended—

4 (1) by inserting “or counter-complainant” after
5 “complainant” the second place it appears;

6 (2) by striking “10(b) (5) or (7)” and inserting
7 “10(b) (2) or (3)”; and

8 (3) by striking the last sentence.

9 **SEC. 109. FOREIGN LAWS AND PRACTICES.**

10 Effective on June 1, 1997, section 10002 of the For-
11 eign Shipping Practices Act of 1988 (46 U.S.C. App.
12 1710a) is amended—

13 (1) in subsection (a)(1)—

14 (A) by striking “‘non-vessel-operating
15 common carrier’,”; and

16 (B) by inserting “‘ocean freight for-
17 warder’,” after “‘ocean common carrier’,”;

18 (2) in subsection (a)(4), by striking “non-ves-
19 sel-operating common carrier operations,”;

20 (3) in subsection (e)(1), by striking subpara-
21 graphs (B) through (D) and inserting the following:

22 “(B) suspension, in whole or in part, of the
23 right of an ocean common carrier to operate under
24 any agreement filed with the Secretary, including
25 any agreement authorizing preferential treatment at
26 any terminal, a preferential terminal lease, space

1 chartering, or pooling of cargo or revenues with
2 other ocean common carriers; and

3 “(C) a fee, not to exceed \$1,000,000 per voy-
4 age.”; and

5 (4) in subsection (h), by striking “section
6 13(b)(5) of the Shipping Act of 1984 (46 U.S.C.
7 App. 1712(b)(5))” and inserting “section 13(b)(2)
8 of the Shipping Act of 1984 (46 U.S.C. App.
9 1712(b)(2))”.

10 **SEC. 110. PENALTIES.**

11 Effective June 1, 1997, section 13 of the Shipping
12 Act of 1984 (46 U.S.C. App. 1712) is amended—

13 (1) in subsection (b)—

14 (A)(i) by striking paragraphs (1) through
15 (3); and

16 (ii) by redesignating paragraphs (4)
17 through (6) as paragraphs (2) through (4), re-
18 spectively;

19 (B) by inserting before paragraph (2), as
20 so redesignated, the following:

21 “(1) If the Secretary finds, after notice and an
22 opportunity for a hearing, that a common carrier
23 has failed to supply information ordered to be pro-
24 duced or compelled by subpoena under section 12,
25 the Secretary may request that the Secretary of the

1 Treasury refuse or revoke any clearance required for
2 a vessel operated by that common carrier. Upon re-
3 quest by the Secretary, the Secretary of the Treas-
4 ury shall, with respect to the vessel concerned,
5 refuse or revoke any clearance required by section
6 4197 of the Revised Statutes of the United States
7 (46 U.S.C. App. 91).”; and

8 (C) in paragraph (3), as so redesignated,
9 by striking “finds appropriate,” and all that
10 follows through the period at the end of the
11 paragraph and inserting “finds appropriate, in-
12 cluding the imposition of the penalties author-
13 ized under paragraph (2).”; and

14 (2) in subsection (f)(1), by striking “section 10
15 (a)(1), (b)(1), or (b)(4)” and inserting “section
16 10(a)(1)”.

17 **SEC. 111. REPORTS.**

18 (a) IN GENERAL.—Effective January 1, 1997, sec-
19 tion 15 of the Shipping Act of 1984 (46 U.S.C. App.
20 1714) is amended—

21 (1) in the section heading by striking “**AND**
22 **CERTIFICATES**”;

23 (2) by striking “(a) REPORTS.—”; and

24 (3) by striking subsection (b).

1 (b) CLERICAL AMENDMENT.—The table of contents
2 contained in the first section of such Act (46 U.S.C. App.
3 1701) is amended by striking the item relating to section
4 15 and inserting the following:

“Sec. 15. Reports.”.

5 **SEC. 112. REGULATIONS.**

6 Section 17 of the Shipping Act of 1984 (46 U.S.C.
7 App. 1716) is amended—

8 (1) by striking “(a)”; and

9 (2) by striking subsection (b).

10 **SEC. 113. REPEAL.**

11 (a) REPEAL.—Section 18 of the Shipping Act of
12 1984 (46 U.S.C. App. 1717) is repealed.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 contained in the first section of such Act (46 U.S.C. App.
15 1701) is amended by striking the item relating to section
16 18.

17 **SEC. 114. OCEAN FREIGHT FORWARDERS.**

18 Effective June 1, 1997, section 19 of the Shipping
19 Act of 1984 (46 U.S.C. App. 1718) is amended—

20 (1) by striking subsection (a) and inserting the
21 following:

22 “(a) LICENSE.—No person in the United States may
23 act as an ocean freight forwarder unless that person holds
24 a license issued by the Commission. The Commission shall
25 issue a forwarder’s license to any person that the Commis-

1 sion determines to be qualified by experience and char-
2 acter to render forwarding services.”;

3 (2) by redesignating subsections (b), (c), and
4 (d) as subsections (c), (d), and (e), respectively;

5 (3) by inserting after subsection (a) the follow-
6 ing:

7 “(b) FINANCIAL RESPONSIBILITY.—

8 “(1) No person may act as an ocean freight for-
9 warder unless that person furnishes a bond, proof of
10 insurance, or other surety in a form and amount de-
11 termined by the Commission to insure financial re-
12 sponsibility that is issued by a surety company
13 found acceptable by the Secretary of the Treasury.

14 “(2) A bond, insurance, or other surety ob-
15 tained pursuant to this section shall be available to
16 pay any judgment for damages against an ocean
17 freight forwarder arising from the transportation-re-
18 lated activities of that ocean freight forwarder under
19 this Act or order for reparation issued pursuant to
20 section 11 or 14.

21 “(3) An ocean freight forwarder that is not
22 domiciled in the United States shall designate a resi-
23 dent agent in the United States for receipt of service
24 of judicial and administrative process, including sub-
25 poenas.”;

1 (4) in subsection (c), as redesignated by para-
2 graph (2) of this section, by striking “a bond in ac-
3 cordance with subsection (a)(2)” and inserting “a
4 bond, proof of insurance, or other surety in accord-
5 ance with subsection (b)(1)”;

6 (5) in subsection (e), as redesignated by para-
7 graph (2) of this section—

8 (A)(i) by striking paragraph (3); and

9 (ii) by redesignating paragraph (4) as
10 paragraph (3); and

11 (B) by adding at the end the following:

12 “(4) No conference or group of 2 or more ocean
13 common carriers in the foreign commerce of the
14 United States that is authorized to agree upon the
15 level of compensation paid to an ocean freight for-
16 warder, as defined in section 3(14)(A), may—

17 “(A) deny to any member of the con-
18 ference or group the right, upon notice of not
19 more than 3 business days, to take independent
20 action on any level of compensation paid to an
21 ocean freight forwarder; or

22 “(B) agree to limit the payment of com-
23 pensation to an ocean freight forwarder as de-
24 fined in section 3(14)(A), to less than 1.25 per-

1 cent of the aggregate of all rates and charges
2 which—

3 “(i) are applicable under a common
4 schedule of transportation rates provided
5 under section 8(a); and

6 “(ii) are assessed against the cargo on
7 which the forwarding services are pro-
8 vided.”.

9 **SEC. 115. EFFECTS ON CERTAIN AGREEMENTS AND CON-**
10 **TRACTS.**

11 Section 20(e) of the Shipping Act of 1984 (46 U.S.C.
12 App. 1719) is amended to read as follows:

13 “(e) SAVINGS PROVISIONS.—

14 “(1) Each service contract entered into by a
15 shipper and an ocean common carrier or conference
16 before the date of the enactment of the Ocean Ship-
17 ping Reform Act of 1995 may remain in full force
18 and effect according to its terms.

19 “(2) This Act and the amendments made by
20 this Act shall not affect any suit—

21 “(A) filed before the date of the enactment
22 of the Ocean Shipping Reform Act of 1995;

23 “(B) with respect to claims arising out of
24 conduct engaged in before the date of the en-
25 actment of the Ocean Shipping Reform Act of

1 1995, filed not later than 1 year after the date
2 of the enactment of the Ocean Shipping Reform
3 Act of 1995;

4 “(C) with respect to claims arising out of
5 conduct engaged in after the date of the enact-
6 ment of the Ocean Shipping Reform Act of
7 1995 but before January 1, 1997, pertaining to
8 a violation of section 10(b) (1), (2), (3), (4), or
9 (8), as in effect before January 1, 1997, filed
10 not later than June 1, 1997;

11 “(D) with respect to claims pertaining to
12 the failure of a common carrier or conference to
13 file its tariffs or service contracts in accordance
14 with this Act in the period beginning January
15 1, 1997, and ending June 1, 1997, filed not
16 later than December 31, 1997; or

17 “(E) with respect to claims arising out of
18 conduct engaged in on or after the date of the
19 enactment of the Ocean Shipping Reform Act
20 of 1995 but before June 1, 1997, filed not later
21 than December 31, 1997.”.

22 **SEC. 116. REPEAL.**

23 (a) REPEAL.—Effective June 1, 1997, section 23 of
24 the Shipping Act of 1984 (46 U.S.C. App. 1721) is re-
25 pealed.

1 (b) CLERICAL AMENDMENT.—Effective June 1,
2 1997, the table of contents contained in the first section
3 of such Act (46 U.S.C. App. 1701) is amended by striking
4 the item relating to section 23.

5 **SEC. 117. MARINE TERMINAL OPERATOR SCHEDULES.**

6 (a) IN GENERAL.—Effective June 1, 1997, the Ship-
7 ping Act of 1984 (46 U.S.C. App. 1701 et seq.) is amend-
8 ed by adding at the end the following:

9 **“SEC. 24. MARINE TERMINAL OPERATOR SCHEDULES.**

10 “A marine terminal operator shall make available to
11 the public a schedule of rates, regulations, and practices,
12 including limitations of liability, pertaining to receiving,
13 delivering, handling, or storing property at its marine ter-
14 minal. The schedule shall be enforceable as an implied
15 contract, without proof of actual knowledge of its provi-
16 sions, for any activity by the marine terminal operator
17 that is taken to—

18 “(1) efficiently transfer property between trans-
19 portation modes;

20 “(2) protect property from damage or loss;

21 “(3) comply with any governmental require-
22 ment; or

23 “(4) store property in excess of the terms of
24 any other contract or agreement, if any, entered into
25 by the marine terminal operator.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 contained in the first section of such Act (46 U.S.C. App.
 3 1701) is amended by adding at the end the following:

“Sec. 24. Marine terminal operator schedules.”.

4 **TITLE II—CONTROLLED**
 5 **CARRIERS AMENDMENTS**

6 **SEC. 201. CONTROLLED CARRIERS.**

7 Effective June 1, 1997, section 9 of the Shipping Act
 8 of 1984 (46 U.S.C. App. 1708) is amended—

9 (1)(A) in the first sentence of subsection (a)—

10 (i) by striking “in its tariffs or service con-
 11 tracts filed with the Commission”; and

12 (ii) by striking “in those tariffs or service
 13 contracts”; and

14 (B) in the last sentence of subsection (a), by
 15 striking “filed by a controlled carrier”;

16 (2) in paragraphs (1) and (2) of subsection (b),
 17 by striking “filed” and inserting “published”;

18 (3) in subsection (c), by striking the first sen-
 19 tence;

20 (4) by striking subsection (d) and inserting the
 21 following:

22 “(d) Not later than 120 days after receiving informa-
 23 tion requested by the Secretary under this section, the
 24 Secretary shall determine whether the rates, charges, clas-
 25 sifications, rules, or regulations of a controlled carrier may

1 be unjust and unreasonable. If the Secretary makes a de-
2 termination under the preceding sentence that the rates,
3 charges, classifications, rules, or regulations involved may
4 be unjust and unreasonable, the Secretary shall issue an
5 order to the controlled carrier to show cause why those
6 rates, charges, classifications, rules, or regulations should
7 not be approved. Pending a determination, the Secretary
8 may suspend the rates, charges, classifications, rules, or
9 regulations at any time. No period of suspension may be
10 greater than 180 days. Whenever the Secretary suspends
11 any rates, charges, classifications, rules, or regulations
12 under this subsection, the affected carrier may publish
13 and, after notification to the Secretary, assess new rates,
14 charges, classifications, rules, or regulations, except that
15 the Secretary may reject the new rates, charges, classifica-
16 tions, rules, or regulations if the Secretary determines that
17 those rates, charges, classifications, rules, or regulations
18 are unreasonable.”;

19 (5) in subsection (f), by striking “This” and in-
20 serting “Subject to subsection (g), this”; and

21 (6) by adding at the end the following new sub-
22 sections:

23 “(g)(1) In addition to applying to the controlled car-
24 riers referred to in subsection (f), the provisions of this
25 section concerning rate standards, information submis-

1 sions, remedies, reviews, and penalties shall apply to any
2 ocean common carrier that is not a controlled carrier if
3 the Secretary determines that ocean common carrier to
4 be structurally or financially affiliated with a government
5 or private nontransportation entity or organization in such
6 manner as to affect the pricing or marketplace behavior
7 of that ocean common carrier in an unfair, predatory, or
8 anticompetitive manner that disadvantages 1 or more
9 other ocean common carriers.

10 “(2) After conducting an investigation and public
11 hearing, the Secretary may make a determination under
12 paragraph (1)—

13 “(A) at the request of any person; or

14 “(B) upon the initiative of the Secretary.

15 “(h) Not later than June 1, 1997, the Secretary shall
16 issue regulations that prescribe the procedures and re-
17 quirements to govern the manner in which controlled car-
18 riers and carriers determined pursuant to subsection
19 (g)(1) to be subject to provisions of this section referred
20 to in that subsection shall submit price information and
21 other information that is necessary for the Secretary to
22 determine whether rates or charges of those carriers are
23 unfair, predatory, or anticompetitive.

24 “(i) In any case in which information provided to the
25 Secretary under this section does not result in an affirma-

1 tive finding or enforcement action by the Secretary, that
2 information may not be made public and shall be exempt
3 from disclosure under section 552 of title 5, United States
4 Code, except as may be relevant to an administrative or
5 judicial action or proceeding. This section does not prevent
6 disclosure to either body of Congress or to a duly author-
7 ized committee or subcommittee of Congress.”.

8 **SEC. 202. NEGOTIATING STRATEGY TO REDUCE GOVERN-**
9 **MENT OWNERSHIP AND CONTROL OF COM-**
10 **MON CARRIERS.**

11 Not later than January 1, 1997, the Secretary of
12 Transportation shall develop, submit to the Congress, and
13 begin implementing a negotiation strategy to persuade for-
14 eign governments to divest themselves of ownership and
15 control of ocean common carriers (as that term is defined
16 in section 3(14) of the Shipping Act of 1984).

17 **SEC. 203. ANNUAL REPORT BY THE SECRETARY.**

18 Not later than September 30, 1998, and annually
19 thereafter, the Secretary shall prepare and submit a report
20 to the Congress concerning—

21 (1) the actions taken under the Foreign Ship-
22 ping Practices Act of 1988, including section 10002
23 of that Act (46 U.S.C. App. 1710a), section 9 of the
24 Shipping Act of 1984 (46 U.S.C. App. 1708), and
25 section 202 of this Act; and

1 (2) the effect on United States maritime em-
2 ployment of laws, rules, regulations, policies, or
3 practices of foreign governments, or any practices of
4 foreign carriers or other persons providing maritime
5 or maritime-related services in a foreign country
6 that result in the existence of conditions that ad-
7 versely affect the operations of United States car-
8 riers in United States oceanborne trade.

9 **TITLE III—ELIMINATION OF THE**
10 **FEDERAL MARITIME COMMIS-**
11 **SION**

12 **SEC. 301. PLAN FOR AGENCY TERMINATION.**

13 (a) IN GENERAL.—

14 (1) IN GENERAL.—Not later than 30 days after
15 the date of the enactment of this Act, the Director
16 of the Office of Management and Budget, in con-
17 sultation with the Secretary of Transportation, shall
18 submit to the Congress a plan to eliminate the Fed-
19 eral Maritime Commission by not later than October
20 1, 1997.

21 (2) CONTENT OF PLAN.—The plan referred to
22 in paragraph (1) shall—

23 (A) include a timetable for the transfer of
24 remaining functions of the Federal Maritime
25 Commission to the Secretary of Transportation,

1 commencing on the earliest feasible date in fis-
2 cal year 1996; and

3 (B) address matters related to personnel
4 and other resources necessary for the Secretary
5 of Transportation to perform the remaining
6 functions of the Federal Maritime Commission.

7 (b) IMPLEMENTATION.—The Director of the Office of
8 Management and Budget shall implement the plan devel-
9 oped by the Director of the Office of Management and
10 Budget under this section to eliminate the Federal Mari-
11 time Commission submitted to Congress under subsection
12 (a) commencing on the earliest feasible date in fiscal year
13 1996.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated such sums as may be
16 necessary to carry out this Act and the amendments made
17 by this Act.

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