Public Law 105–258
105th Congress

An Act

Oct. 14, 1998
[S. 414]

To amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States exports, and for other purposes.

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

Ocean Shipping Reform Act of 1998.
46 USC app. 1701 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ocean Shipping Reform Act of 1998".

46 USC app. 1701 note.

SEC. 2. EFFECTIVE DATE.

Except as otherwise expressly provided in this Act, this Act and the amendments made by this Act take effect May 1, 1999.

TITLE I—AMENDMENTS TO THE SHIPPING ACT OF 1984

SEC. 101. PURPOSE.

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

(1) striking "and" after the semicolon in paragraph (2);

(2) striking "needs." in paragraph (3) and inserting "needs; and";

(3) adding at the end thereof the following:

"(4) to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.".

SEC. 102. DEFINITIONS.

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

(1) striking "the government under whose registry the vessels of the carrier operate;" in paragraph (8) and inserting "a government;";

(2) striking paragraph (9) and inserting the following:

"(9) 'deferred rebate' means a return by a common carrier of any portion of freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier over a fixed period of time, the payment of which is deferred beyond the completion of service for which it is paid, and is made only if the shipper has agreed to make a further shipment or shipments with that or any other common carrier.";

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(3) striking paragraph (10) and redesignating paragraphs (11) through (27) as paragraphs (10) through (26);

(4) striking "in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container," in paragraph (10), as redesignated;

(5) striking "paper board in rolls, and paper in rolls." in paragraph (10) as redesignated and inserting "paper and paper board in rolls or in pallet or skid-sized sheets.";

(6) striking "conference, other than a service contract or contract based upon time-volume rates," in paragraph (13) as redesignated and inserting "agreement";

(7) striking "conference." in paragraph (13) as redesignated and inserting "agreement and the contract provides for a deferred rebate arrangement.";

(8) striking "carrier." in paragraph (14) as redesignated and inserting "carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States Code.";

(9) striking paragraph (16) as redesignated and redesignating paragraphs (17) through (26) as redesignated as paragraphs (16) through (25), respectively;

(10) striking paragraph (17), as redesignated, and inserting the following:

"(17) 'ocean transportation intermediary' means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this paragraph, the term—

"(A) 'ocean freight forwarder' means a person that—

"(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

"(ii) processes the documentation or performs related activities incident to those shipments; and

"(B) 'non-vessel-operating common carrier' means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.";

(11) striking paragraph (19), as redesignated and inserting the following:

"(19) 'service contract' means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party."; and

(12) striking paragraph (21), as redesignated, and inserting the following:

"(21) 'shipper' means—

"(A) a cargo owner;

"(B) the person for whose account the ocean transportation is provided;

"(C) the person to whom delivery is to be made;

"(D) a shippers' association; or

"(E) an ocean transportation intermediary, as defined in paragraph (17)(B) of this section, that accepts responsibility for payment of all charges applicable under the tariff or service contract.".

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

(a) OCEAN COMMON CARRIERS.—Section 4(a) of the Shipping Act of 1984 (46 U.S.C. App. 1703(a)) is amended by—

(1) striking "operators or non-vessel-operating common carriers;" in paragraph (5) and inserting "operators;";

(2) striking "and" in paragraph (6) and inserting "or"; and

(3) striking paragraph (7) and inserting the following:

"(7) discuss and agree on any matter related to service contracts.".

(b) MARINE TERMINAL OPERATORS.—Section 4(b) of that Act (46 U.S.C. App. 1703(b)) is amended by—

(1) striking "(to the extent the agreements involve ocean transportation in the foreign commerce of the United States)";

(2) striking "and" in paragraph (1) and inserting "or"; and

(3) striking "arrangements." in paragraph (2) and inserting "arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.".

SEC. 104. AGREEMENTS.

(a) IN GENERAL.—Section 5 of the Shipping Act of 1984 (46 U.S.C. App. 1704) is amended by—

(1) striking subsection (b)(8) and inserting the following:

"(8) provide that any member of the conference may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and that, except for exempt commodities not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item;

(2) redesignating subsections (c) through (e) as subsections (d) through (f); and

(3) inserting after subsection (b) the following:

"(c) OCEAN COMMON CARRIER AGREEMENTS.—An ocean common carrier agreement may not—

"(1) prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with 1 or more shippers;

"(2) require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required to be published under section 8(c)(3) of this Act; or

"(3) adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into service contracts.

An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's

or agreement members' service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. These guidelines shall be confidentially submitted to the Commission.". Confidentiality.

(b) APPLICATION.—

(1) Subsection (e) of section 5 of that Act, as redesignated, is amended by striking "this Act, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, do" and inserting "this Act does"; and 46 USC app. 1704.

(2) Subsection (f) of section 5 of that Act, as redesignated, is amended by—

(A) striking "and the Shipping Act, 1916, do" and inserting "does";

(B) striking "or the Shipping Act, 1916,"; and

(C) inserting "or are essential terms of a service contract" after "tariff".

SEC. 105. EXEMPTION FROM ANTITRUST LAWS.

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

(1) inserting "or publication" in paragraph (2) of subsection (a) after "filing";

(2) striking "or" at the end of subsection (b)(2);

(3) striking "States." at the end of subsection (b)(3) and inserting "States; or"; and

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

"(4) to any loyalty contract.".

SEC. 106. TARIFFS.

(a) IN GENERAL.—Section 8(a) of the Shipping Act of 1984 (46 U.S.C. App. 1707(a)) is amended by—

(1) inserting "new assembled motor vehicles," after "scrap," in paragraph (1);

(2) striking "file with the Commission, and" in paragraph (1);

(3) striking "inspection," in paragraph (1) and inserting "inspection in an automated tariff system,";

(4) striking "tariff filings" in paragraph (1) and inserting "tariffs";

(5) striking "freight forwarder" in paragraph (1)(C) and inserting "transportation intermediary, as defined in section 3(17)(A),";

(6) striking "and" at the end of paragraph (1)(D);

(7) striking "loyalty contract," in paragraph (1)(E);

(8) striking "agreement." in paragraph (1)(E) and inserting "agreement; and";

(9) adding at the end of paragraph (1) the following:

"(F) include copies of any loyalty contract, omitting the shipper's name."; and

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

"(2) Tariffs shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access. No charge may be assessed a Federal agency for such access.".

(b) SERVICE CONTRACTS.—Subsection (c) of that section is amended to read as follows:

"(c) SERVICE CONTRACTS.—

"(1) IN GENERAL.—An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this Act. The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. In no case may the contract dispute resolution forum be controlled by or in any way affiliated with a controlled carrier as defined in section 3(8) of this Act, or by the government which owns or controls the carrier.

Confidentiality.

"(2) FILING REQUIREMENTS.—Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste, each contract entered into under this subsection by an individual ocean common carrier or an agreement shall be filed confidentially with the Commission. Each service contract shall include the following essential terms—

"(A) the origin and destination port ranges;

"(B) the origin and destination geographic areas in the case of through intermodal movements;

"(C) the commodity or commodities involved;

"(D) the minimum volume or portion;

"(E) the line-haul rate;

"(F) the duration;

"(G) service commitments; and

"(H) the liquidated damages for nonperformance, if any.

Public information.

"(3) PUBLICATION OF CERTAIN TERMS.—When a service contract is filed confidentially with the Commission, a concise statement of the essential terms described in paragraphs 2 (A), (C), (D), and (F) shall be published and made available to the general public in tariff format.

"(4) DISCLOSURE OF CERTAIN TERMS.—

"(A) An ocean common carrier, which is a party to or is subject to the provisions of a collective bargaining agreement with a labor organization, shall, in response to a written request by such labor organization, state whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transportation under a service contract described in paragraph (1) of this subsection—

"(i) the movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area;

"(ii) the assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

"(iii) the assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; and

"(iv) the assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

"(B) The common carrier shall provide the information described in subparagraph (A) of this paragraph to the

requesting labor organization within a reasonable period of time.

"(C) This paragraph requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this paragraph.

"(D) Nothing in this paragraph shall have any effect on the lawfulness or unlawfulness under this Act, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other Federal or State law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under this subsection.

"(E) For purposes of this paragraph the terms 'dock area' and 'within the port area' shall have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.".

(c) RATES.—Subsection (d) of that section is amended by—

(1) striking the subsection caption and inserting "(d) TARIFF RATES.—";

(2) striking "30 days after filing with the Commission." in the first sentence and inserting "30 calendar days after publication.";

(3) inserting "calendar" after "30" in the next sentence; and

(4) striking "publication and filing with the Commission." in the last sentence and inserting "publication.".

(d) REFUNDS.—Subsection (e) of that section is amended by—

(1) striking "tariff of a clerical or administrative nature or an error due to inadvertence" in paragraph (1) and inserting a comma; and

(2) striking "file a new tariff," in paragraph (1) and inserting "publish a new tariff, or an error in quoting a tariff,";

(3) striking "refund, filed a new tariff with the Commission" in paragraph (2) and inserting "refund for an error in a tariff or a failure to publish a tariff, published a new tariff";

(4) inserting "and" at the end of paragraph (2); and

(5) striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(e) MARINE TERMINAL OPERATOR SCHEDULES.—Subsection (f) of that section is amended to read as follows:

"(f) MARINE TERMINAL OPERATOR SCHEDULES.—A marine terminal operator may make available to the public, subject to section 10(d) of this Act, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining

to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.".

(f) AUTOMATED TARIFF SYSTEM REQUIREMENTS; FORM.—Section 8 of that Act is amended by adding at the end the following:

46 USC app. 1707.

"(g) REGULATIONS.—The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission may, after periodic review, prohibit the use of any automated tariff system that fails to meet the requirements established under this section. The Commission may not require a common carrier to provide a remote terminal for access under subsection (a)(2). The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.".

Publication.

SEC. 107. AUTOMATED TARIFF FILING AND INFORMATION SYSTEM.

Section 502 of the High Seas Driftnet Fisheries Enforcement Act (46 U.S.C. App. 1707a) is repealed.

SEC. 108. CONTROLLED CARRIERS.

Section 9 of the Shipping Act of 1984 (46 U.S.C. App. 1708) is amended by—

(1) striking "service contracts filed with the Commission" in the first sentence of subsection (a) and inserting "service contracts, or charge or assess rates,";

(2) striking "or maintain" in the first sentence of subsection (a) and inserting "maintain, or enforce";

(3) striking "disapprove" in the third sentence of subsection (a) and inserting "prohibit the publication or use of"; and

(4) striking "filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission" in the last sentence of subsection (a) and inserting "that have been suspended or prohibited by the Commission";

(5) striking "may take into account appropriate factors including, but not limited to, whether—" in subsection (b) and inserting "shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs. For purposes of the preceding sentence, the term 'constructive costs' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade. The Commission may also take into account other appropriate factors, including but not limited to, whether—";

(6) striking paragraph (1) of subsection (b) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(7) striking "filed" in paragraph (1) as redesignated and inserting "published or assessed";

(8) striking "filing with the Commission." in subsection (c) and inserting "publication.";

Deadline.

(9) striking "DISAPPROVAL OF RATES.—" in subsection (d) and inserting "PROHIBITION OF RATES.—Within 120 days after the receipt of information requested by the Commission under

this section, the Commission shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable.";

(10) striking "filed" in subsection (d) and inserting "published or assessed";

(11) striking "may issue" in subsection (d) and inserting "shall issue";

(12) striking "disapproved." in subsection (d) and inserting "prohibited.";

(13) striking "60" in subsection (d) and inserting "30";

(14) inserting "controlled" after "affected" in subsection (d);

(15) striking "file" in subsection (d) and inserting "publish";

(16) striking "disapproval" in subsection (e) and inserting "prohibition";

(17) inserting "or" after the semicolon in subsection (f)(1);

(18) striking paragraphs (2), (3), and (4) of subsection (f); and

(19) redesignating paragraph (5) of subsection (f) as paragraph (2).

SEC. 109. PROHIBITED ACTS.

(a) Section 10(b) of the Shipping Act of 1984 (46 U.S.C. App. 1709(b)) is amended by—

(1) striking paragraphs (1) through (3);

(2) redesignating paragraph (4) as paragraph (1);

(3) inserting after paragraph (1), as redesignated, the following:

"(2) provide service in the liner trade that—

"(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under section 8 of this Act unless excepted or exempted under section 8(a)(1) or 16 of this Act; or

"(B) is under a tariff or service contract which has been suspended or prohibited by the Commission under section 9 of this Act or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a);";

(4) redesignating paragraphs (5) and (6) as paragraphs (3) and (4), respectively;

(5) striking "except for service contracts," in paragraph (4), as redesignated, and inserting "for service pursuant to a tariff,";

(6) striking "rates;" in paragraph (4)(A), as redesignated, and inserting "rates or charges;";

(7) inserting after paragraph (4), as redesignated, the following:

"(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;";

(8) redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively;

(9) striking paragraph (6) as redesignated and inserting the following:

"(6) use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;";

(10) striking paragraphs (9) through (13) and inserting the following:

"(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

"(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

"(10) unreasonably refuse to deal or negotiate;";

(11) redesignating paragraphs (14), (15), and (16) as paragraphs (11), (12), and (13), respectively;

(12) striking "a non-vessel-operating common carrier" in paragraphs (11) and (12) as redesignated and inserting "an ocean transportation intermediary";

(13) striking "sections 8 and 23" in paragraphs (11) and (12) as redesignated and inserting "sections 8 and 19";

(14) striking "or in which an ocean transportation intermediary is listed as an affiliate" in paragraph (12), as redesignated;

(15) striking "Act;" in paragraph (12), as redesignated, and inserting "Act, or with an affiliate of such ocean transportation intermediary;"

(16) striking "paragraph (16)" in the matter appearing after paragraph (13), as redesignated, and inserting "paragraph (13)"; and

(17) inserting "the Commission," after "United States," in such matter.

(b) Section 10(c) of the Shipping Act of 1984 (46 U.S.C. App. 1709(c)) is amended by—

(1) striking "non-ocean carriers" in paragraph (4) and inserting "non-ocean carriers, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this Act";

(2) striking "freight forwarder" in paragraph (5) and inserting "transportation intermediary, as defined by section 3(17)(A) of this Act,";

(3) striking "or" at the end of paragraph (5);

(4) striking "contract." in paragraph (6) and inserting "contract;"; and

(5) adding at the end the following:

"(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries; or

"(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries;".

(c) Section 10(d) of the Shipping Act of 1984 (46 U.S.C. App. 1709(d)) is amended by—

(1) striking "freight forwarders," and inserting "transportation intermediaries,";

(2) striking "freight forwarder," in paragraph (1) and inserting "transportation intermediary,";

(3) striking "subsection (b)(11), (12), and (16)" and inserting "subsections (b)(10) and (13)"; and

(4) adding at the end thereof the following:

"(4) No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

"(5) The prohibition in subsection (b)(13) of this section applies to ocean transportation intermediaries, as defined by section 3(17)(A) of this Act.".

SEC. 110. COMPLAINTS, INVESTIGATIONS, REPORTS, AND REPARATIONS.

Section 11(g) of the Shipping Act of 1984 (46 U.S.C. App. 1710(g)) is amended by—

(1) striking "section 10(b)(5) or (7)" and inserting "section 10(b)(3) or (6)"; and

(2) striking "section 10(b)(6)(A) or (B)" and inserting "section 10(b)(4)(A) or (B).".

SEC. 111. FOREIGN SHIPPING PRACTICES ACT OF 1988.

Section 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a) is amended by—

(1) striking "'non-vessel-operating common carrier'," in subsection (a)(1) and inserting "'ocean transportation intermediary',";

(2) striking "forwarding and" in subsection (a)(4);

(3) striking "non-vessel-operating common carrier" in subsection (a)(4) and inserting "ocean transportation intermediary services and";

(4) striking "freight forwarder," in subsections (c)(1) and (d)(1) and inserting "transportation intermediary,";

(5) striking "filed with the Commission," in subsection (e)(1)(B) and inserting "and service contracts,";

(6) inserting "and service contracts" after "tariffs" the second place it appears in subsection (e)(1)(B); and

(7) striking "(b)(5)" each place it appears in subsection (h) and inserting "(b)(6)".

SEC. 112. PENALTIES.

(a) Section 13(a) of the Shipping Act of 1984 (46 U.S.C. App. 1712(a)) is amended by adding at the end thereof the following: "The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels operated by that common carrier and any such vessel may be libeled therefore in the district court of the United States for the district in which it may be found.".

(b) Section 13(b) of the Shipping Act of 1984 (46 U.S.C. App. 1712(b)) is amended by—

(1) striking "section 10(b)(1), (2), (3), (4), or (8)" in paragraph (1) and inserting "section 10(b)(1), (2), or (7)";

(2) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively;

(3) inserting before paragraph (5), as redesignated, the following:

"(4) If the Commission finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 12 of this Act, the Commission may request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the Commission, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).";

(4) striking "paragraphs (1), (2), and (3)" in paragraph (6), as redesignated, and inserting "paragraphs (1), (2), (3), and (4)".

(c) Section 13(f)(1) of the Shipping Act of 1984 (46 U.S.C. App. 1712(f)(1)) is amended by—

(1) striking "or (b)(4)" and inserting "or (b)(2)";

(2) striking "(b)(1), (4)" and inserting "(b)(1), (2)"; and

(3) adding at the end thereof the following "Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.".

SEC. 113. REPORTS AND CERTIFICATES.

Section 15 of the Shipping Act of 1984 (46 U.S.C. App. 1714) is amended by—

(1) striking "and certificates" in the section heading;

(2) striking "(a) REPORTS.—" in the subsection heading for subsection (a); and

(3) striking subsection (b).

SEC. 114. EXEMPTIONS.

Section 16 of the Shipping Act of 1984 (46 U.S.C. App. 1715) is amended by striking "substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce." and inserting "result in substantial reduction in competition or be detrimental to commerce.".

SEC. 115. AGENCY REPORTS AND ADVISORY COMMISSION.

Section 18 of the Shipping Act of 1984 (46 U.S.C. App. 1717) is repealed.

SEC. 116. OCEAN FREIGHT FORWARDERS.

Section 19 of the Shipping Act of 1984 (46 U.S.C. App. 1718) is amended by—

(1) striking "freight forwarders" in the section caption and inserting "transportation intermediaries";

(2) striking subsection (a) and inserting the following:

"(a) LICENSE.—No person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the Commission. The Commission shall issue an intermediary's license to any person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.";

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

(4) inserting after subsection (a) the following:

"(b) FINANCIAL RESPONSIBILITY.—

"(1) No person may act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

"(2) A bond, insurance, or other surety obtained pursuant to this section—

"(A) shall be available to pay any order for reparation issued pursuant to section 11 or 14 of this Act, or any penalty assessed pursuant to section 13 of this Act;

"(B) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities described in section 3(17) of this Act with the consent of the insured ocean transportation intermediary and subject to review by the surety company, or when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

"(C) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities under section 3(17) of this Act, provided the claimant has first attempted to resolve the claim pursuant to subparagraph (B) of this paragraph and the claim has not been resolved within a reasonable period of time.

"(3) The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission. Regulations.

"(4) An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.";

(5) striking, each place such term appears—

(A) "freight forwarder" and inserting "transportation intermediary";

(B) "a forwarder's" and inserting "an intermediary's";

(C) "forwarder" and inserting "intermediary"; and

(D) "forwarding" and inserting "intermediary";

(6) striking "a bond in accordance with subsection (a)(2)." in subsection (c), as redesignated, and inserting "a bond, proof of insurance, or other surety in accordance with subsection (b)(1).";

(7) striking "FORWARDERS.—" in the caption of subsection (e), as redesignated, and inserting "INTERMEDIARIES.—";

(8) striking "intermediary" the first place it appears in subsection (e)(1), as redesignated and as amended by paragraph

(5)(A), and inserting "intermediary, as defined in section 3(17)(A) of this Act,";

(9) striking "license" in paragraph (1) of subsection (e), as redesignated, and inserting "license, if required by subsection (a),";

(10) striking paragraph (3) of subsection (e), as redesignated, and redesignating paragraph (4) as paragraph (3); and

(11) adding at the end of subsection (e), as redesignated, the following:

"(4) No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean transportation intermediary, as defined in section 3(17)(A) of this Act, may—

"(A) deny to any member of the conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean transportation intermediary, as so defined; or

"(B) agree to limit the payment of compensation to an ocean transportation intermediary, as so defined, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a tariff and which are assessed against the cargo on which the intermediary services are provided.".

SEC. 117. CONTRACTS, AGREEMENTS, AND LICENSES UNDER PRIOR SHIPPING LEGISLATION.

Section 20 of the Shipping Act of 1984 (46 U.S.C. App. 1719) is amended by—

(1) striking subsection (d) and inserting the following:

"(d) EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS.—All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916, or the Shipping Act of 1984, shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998, and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998.";

(2) inserting the following at the end of subsection (e):

"(3) The Ocean Shipping Reform Act of 1998 shall not affect any suit—

"(A) filed before the effective date of that Act; or

"(B) with respect to claims arising out of conduct engaged in before the effective date of that Act filed within 1 year after the effective date of that Act.

Regulations.

"(4) Regulations issued by the Federal Maritime Commission shall remain in force and effect where not inconsistent with this Act, as amended by the Ocean Shipping Reform Act of 1998.".

SEC. 118. SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS.

Section 23 of the Shipping Act of 1984 (46 U.S.C. App. 1721) is repealed.

TITLE II—AUTHORIZATION OF APPROPRIATIONS FOR THE FEDERAL MARITIME COMMISSION

SEC. 201. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1998.

There are authorized to be appropriated to the Federal Maritime Commission, $15,000,000 for fiscal year 1998.

SEC. 202. FEDERAL MARITIME COMMISSION ORGANIZATION.

Section 102(d) of Reorganization Plan No. 7 of 1961 (75 Stat. 840) is amended to read as follows:

5 USC app; 46 USC app. 1111 note.

"(d) A vacancy or vacancies in the membership of Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members serving on the Commission is required to dispose of any matter before the Commission.".

SEC. 203. REGULATIONS.

Deadline. 46 USC app. 1716 note.

Not later than March 1, 1999, the Federal Maritime Commission shall prescribe final regulations to implement the changes made by this Act.

TITLE III—AMENDMENTS TO OTHER SHIPPING AND MARITIME LAWS

SEC. 301. AMENDMENTS TO SECTION 19 OF THE MERCHANT MARINE ACT, 1920.

(a) IN GENERAL.—Section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876) is amended by—

(1) striking "forwarding and" in subsection (1)(b);

(2) striking "non-vessel-operating common carrier operations," in subsection (1)(b) and inserting "ocean transportation intermediary services and operations,";

(3) striking "methods or practices" and inserting "methods, pricing practices, or other practices" in subsection (1)(b);

(4) striking "tariffs of a common carrier" in subsection 7(d) and inserting "tariffs and service contracts of a common carrier";

(5) striking "use the tariffs of conferences" in subsections (7)(d) and (9)(b) and inserting "use tariffs of conferences and service contracts of agreements";

(6) striking "tariffs filed with the Commission" in subsection (9)(b) and inserting "tariffs and service contracts";

(7) striking "freight forwarder," each place it appears and inserting "transportation intermediary,"; and

(8) striking "tariff" each place it appears in subsection (11) and inserting "tariff or service contract".

(b) STYLISTIC CONFORMITY.—Section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), as amended by subsection (a), is further amended by—

(1) redesignating subdivisions (1) through (12) as subsections (a) through (l), respectively;

(2) redesignating subdivisions (a), (b), and (c) of subsection (a), as redesignated, as paragraphs (1), (2), and (3);

(3) redesignating subdivisions (a) through (d) of subsection (f), as redesignated, as paragraphs (1) through (4), respectively;

(4) redesignating subdivisions (a) through (e) of subsection (g), as redesignated, as paragraphs (1) through (5), respectively;

(5) redesignating clauses (i) and (ii) of subsection (g)(4), as redesignated, as subparagraphs (A) and (B), respectively;

(6) redesignating subdivisions (a) through (e) of subsection (i), as redesignated, as paragraphs (1) through (5), respectively;

(7) redesignating subdivisions (a) and (b) of subsection (j), as redesignated, as paragraphs (1) and (2), respectively;

(8) striking "subdivision (c) of paragraph (1)" in subsection (c), as redesignated, and inserting "subsection (a)(3)";

(9) striking "paragraph (2)" in subsection (c), as redesignated, and inserting "subsection (b)";

(10) striking "paragraph (1)(b)" each place it appears and inserting "subsection (a)(2)";

(11) striking "subdivision (b)," in subsection (g)(4), as redesignated, and inserting "paragraph (2),";

(12) striking "paragraph (9)(d)" in subsection (j)(1), as redesignated, and inserting "subsection (i)(4)"; and

(13) striking "paragraph (7)(d) or (9)(b)" in subsection (k), as redesignated, and inserting "subsection (g)(4) or (i)(2)".

SEC. 302. TECHNICAL CORRECTIONS.

(a) PUBLIC LAW 89–777.—Sections 2 and 3 of the Act of November 6, 1966 (46 U.S.C. App. 817d and 817e) are amended by striking "they in their discretion" each place it appears and inserting "it in its discretion".

(b) TARIFF ACT OF 1930.—Section 641(i) of the Tariff Act of 1930 (19 U.S.C. 1641) is repealed.

TITLE IV—CERTAIN LOAN GUARANTEES AND COMMITMENTS

46 USC app. 1273a.

SEC. 401. CERTAIN LOAN GUARANTEES AND COMMITMENTS.

(a) The Secretary of Transportation may not issue a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) after the date of enactment of this Act unless the Chairman of the Federal Maritime Commission certifies that the operator of such vessel—

(1) has not been found by the Commission to have violated section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1701a), within the previous 5 years; and

(2) has not been found by the Commission to have committed a violation of the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), which involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port within the previous 5 years.

(b) The Secretary of Commerce may not issue a guarantee or a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel operator has been—

(1) held liable or liable in rem for a civil penalty pursuant to section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and not paid the penalty;

(2) found guilty of an offense pursuant to section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty pursuant to section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard pursuant to title 33 or 46, United States Code, and not paid the assessed fine.

Approved October 14, 1998.

LEGISLATIVE HISTORY—S. 414:

SENATE REPORTS: No. 105–61 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 144 (1998):

Apr. 3, 21, considered and passed Senate.

Aug. 4, considered and passed House, amended.

Oct. 1, Senate concurred in House amendment.

(2) redesignating subdivisions (a), (b), and (c) of subsection (a), as redesignated, as paragraphs (1), (2), and (3);

(3) redesignating subdivisions (a) through (d) of subsection (f), as redesignated, as paragraphs (1) through (4), respectively;

(4) redesignating subdivisions (a) through (e) of subsection (g), as redesignated, as paragraphs (1) through (5), respectively;

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(7) redesignating subdivisions (a) and (b) of subsection (j), as redesignated, as paragraphs (1) and (2), respectively;

(8) striking "subdivision (c) of paragraph (1)" in subsection (c), as redesignated, and inserting "subsection (a)(3)";

(9) striking "paragraph (2)" in subsection (c), as redesignated, and inserting "subsection (b)";

(10) striking "paragraph (1)(b)" each place it appears and inserting "subsection (a)(2)";

(11) striking "subdivision (b)," in subsection (g)(4), as redesignated, and inserting "paragraph (2),";

(12) striking "paragraph (9)(d)" in subsection (j)(1), as redesignated, and inserting "subsection (i)(4)"; and

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(3) held liable for a civil or criminal penalty pursuant to section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

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