

117TH CONGRESS
2^D SESSION

S. 3580

AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ocean Shipping Re-
3 form Act of 2022”.

4 **SEC. 2. PURPOSES.**

5 Section 40101 of title 46, United States Code, is
6 amended—

7 (1) by striking paragraph (2) and inserting the
8 following:

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

12 (2) in paragraph (3), by inserting “and sup-
13 porting commerce” after “needs”; and

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

16 “(4) promote the growth and development of
17 United States exports through a competitive and ef-
18 ficient system for the carriage of goods by water in
19 the foreign commerce of the United States, and by
20 placing a greater reliance on the marketplace.”.

21 **SEC. 3. SERVICE CONTRACTS.**

22 Section 40502(c) of title 46, United States Code, is
23 amended—

24 (1) in paragraph (7), by striking “; and” and
25 inserting a semicolon;

1 (2) in paragraph (8), by striking the period and
2 inserting “; and”; and

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

4 “(9) any other essential terms that the Federal
5 Maritime Commission determines necessary or ap-
6 propriate through a rulemaking process.”.

7 **SEC. 4. SHIPPING EXCHANGE REGISTRY.**

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

11 **“§ 40504. Shipping exchange registry**

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

18 “(b) REGISTRATION.—A person shall register a ship-
19 ping exchange by filing with the Federal Maritime Com-
20 mission an application for registration in such form as the
21 Commission, by rule, may prescribe, containing the rules
22 of the exchange and such other information and docu-
23 ments as the Commission, by rule, may prescribe as nec-
24 essary or appropriate to complete a shipping exchange’s
25 registration.

1 “(c) EXEMPTION.—The Commission may exempt,
2 conditionally or unconditionally, a shipping exchange from
3 registration under this section if the Commission finds
4 that the shipping exchange is subject to comparable, com-
5 prehensive supervision and regulation by the appropriate
6 governmental authorities in a foreign country where the
7 shipping exchange is headquartered.

8 “(d) REGULATIONS.—Not later than 3 years after
9 the date of enactment of the Ocean Shipping Reform Act
10 of 2022, the Commission shall issue regulations pursuant
11 to subsection (a), which shall set standards necessary to
12 carry out subtitle IV of this title for registered national
13 shipping exchanges. For consideration of a service con-
14 tract entered into by a shipping exchange, the Commission
15 shall be limited to the minimum essential terms for service
16 contracts established under section 40502 of this title.

17 “(e) DEFINITION OF SHIPPING EXCHANGE.—In this
18 section, the term ‘shipping exchange’ means a platform
19 (digital, over-the-counter, or otherwise) that connects
20 shippers with common carriers for the purpose of entering
21 into underlying agreements or contracts for the transport
22 of cargo, by vessel or other modes of transportation.”.

23 (b) APPLICABILITY.—The registration requirement
24 under section 40504 of title 46, United States Code (as
25 added by subsection (a)), shall take effect on the date on

1 which the Federal Maritime Commission states the rule
2 is effective in the regulations issued under such section.

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

“40504. Shipping exchange registry.”.

6 **SEC. 5. PROHIBITION ON RETALIATION.**

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

9 “(d) RETALIATION AND OTHER DISCRIMINATORY
10 ACTIONS.—A common carrier, marine terminal operator,
11 or ocean transportation intermediary, acting alone or in
12 conjunction with any other person, directly or indirectly,
13 may not—

14 “(1) retaliate against a shipper, an agent of a
15 shipper, an ocean transportation intermediary, or a
16 motor carrier by refusing, or threatening to refuse,
17 an otherwise-available cargo space accommodation;
18 or

19 “(2) resort to any other unfair or unjustly dis-
20 criminatory action for—

21 “(A) the reason that a shipper, an agent of
22 a shipper, an ocean transportation inter-
23 mediary, or motor carrier has—

24 “(i) patronized another carrier; or

1 “(ii) filed a complaint against the
2 common carrier, marine terminal operator,
3 or ocean transportation intermediary; or
4 “(B) any other reason.”.

5 **SEC. 6. PUBLIC DISCLOSURE.**

6 Section 46106 of title 46, United States Code, is
7 amended by adding at the end the following:

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

11 “(1) all findings by the Commission of false de-
12 tention and demurrage invoice information by com-
13 mon carriers under section 41104(a)(15) of this
14 title; and

15 “(2) all penalties imposed or assessed against
16 common carriers, as applicable, under sections
17 41107, 41108, and 41109, listed by each common
18 carrier.”.

19 **SEC. 7. COMMON CARRIERS.**

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

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph (1),
24 by striking “may not” and inserting “shall
25 not”;

1 (B) by striking paragraph (3) and insert-
2 ing the following:

3 “(3) unreasonably refuse cargo space accom-
4 modations when available, or resort to other unfair
5 or unjustly discriminatory methods;”;

6 (C) in paragraph (5), by striking“ in the
7 matter of rates or charges” and inserting
8 “against any commodity group or type of ship-
9 ment or in the matter of rates or charges”;

10 (D) in paragraph (10), by adding “, in-
11 cluding with respect to vessel space accommoda-
12 tions provided by an ocean common carrier”
13 after “negotiate”;

14 (E) in paragraph (12) by striking “; or”
15 and inserting a semicolon;

16 (F) in paragraph (13) by striking the pe-
17 riod and inserting a semicolon; and

18 (G) by adding at the end the following:

19 “(14) assess any party for a charge that is in-
20 consistent or does not comply with all applicable pro-
21 visions and regulations, including subsection (c) of
22 section 41102 or part 545 of title 46, Code of Fed-
23 eral Regulations (or successor regulations);

24 “(15) invoice any party for demurrage or deten-
25 tion charges unless the invoice includes information

1 as described in subsection (d) showing that such
2 charges comply with—

3 “(A) all provisions of part 545 of title 46,
4 Code of Federal Regulations (or successor regu-
5 lations); and

6 “(B) applicable provisions and regulations,
7 including the principles of the final rule pub-
8 lished on May 18, 2020, entitled ‘Interpretive
9 Rule on Demurrage and Detention Under the
10 Shipping Act’ (or successor rule); or

11 “(16) for service pursuant to a service contract,
12 give any undue or unreasonable preference or advan-
13 tage or impose any undue or unreasonable prejudice
14 or disadvantage against any commodity group or
15 type of shipment.”; and

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

17 “(d) DETENTION AND DEMURRAGE INVOICE INFOR-
18 MATION.—

19 “(1) INACCURATE INVOICE.—If the Commission
20 determines, after an investigation in response to a
21 submission under section 41310, that an invoice
22 under subsection (a)(15) was inaccurate or false,
23 penalties or refunds under section 41107 shall be
24 applied.

1 “(2) CONTENTS OF INVOICE.—An invoice under
2 subsection (a)(15), unless otherwise determined by
3 subsequent Commission rulemaking, shall include ac-
4 curate information on each of the following, as well
5 as minimum information as determined by the Com-
6 mission:

7 “(A) Date that container is made avail-
8 able.

9 “(B) The port of discharge.

10 “(C) The container number or numbers.

11 “(D) For exported shipments, the earliest
12 return date.

13 “(E) The allowed free time in days.

14 “(F) The start date of free time.

15 “(G) The end date of free time.

16 “(H) The applicable detention or demur-
17 rage rule on which the daily rate is based.

18 “(I) The applicable rate or rates per the
19 applicable rule.

20 “(J) The total amount due.

21 “(K) The email, telephone number, or
22 other appropriate contact information for ques-
23 tions or requests for mitigation of fees.

24 “(L) A statement that the charges are con-
25 sistent with any of Federal Maritime Commis-

1 sion rules with respect to detention and demur-
2 rage.

3 “(M) A statement that the common car-
4 rier’s performance did not cause or contribute
5 to the underlying invoiced charges.

6 “(e) SAFE HARBOR.—If a non-vessel operating com-
7 mon carrier passes through to the relevant shipper an in-
8 voice made by the ocean common carrier, and the Commis-
9 sion finds that the non-vessel operating common carrier
10 is not otherwise responsible for the charge, then the ocean
11 common carrier shall be subject to refunds or penalties
12 pursuant to subsection (d)(1).

13 “(f) ELIMINATION OF CHARGE OBLIGATION.—Fail-
14 ure to include the information required under subsection
15 (d) on an invoice with any demurrage or detention charge
16 shall eliminate any obligation of the charged party to pay
17 the applicable charge.”.

18 (b) RULEMAKING ON DEMURRAGE OR DETENTION.—

19 (1) IN GENERAL.—Not later than 45 days after
20 the date of enactment of this Act, the Federal Mari-
21 time Commission shall initiate a rulemaking further
22 defining prohibited practices by common carriers,
23 marine terminal operators, shippers, and ocean
24 transportation intermediaries under section 41102(c)
25 of title 46, United States Code, regarding the as-

1 assessment of demurrage or detention charges. The
2 Federal Maritime Commission shall issue a final rule
3 defining such practices not later than 1 year after
4 the date of enactment of this Act.

5 (2) CONTENTS.—The rule under paragraph (1)
6 shall only seek to further clarify reasonable rules
7 and practices related to the assessment of detention
8 and demurrage charges to address the issues identi-
9 fied in the final rule published on May 18, 2020, en-
10 titled “Interpretive Rule on Demurrage and Deten-
11 tion Under the Shipping Act” (or successor rule), in-
12 cluding a determination of which parties may be ap-
13 propriately billed for any demurrage, detention, or
14 other similar per container charges.

15 (c) RULEMAKING ON UNFAIR OR UNJUSTLY DIS-
16 CRIMINATORY METHODS.—Not later than 60 days after
17 the date of enactment of this Act, the Federal Maritime
18 Commission shall initiate a rulemaking defining unfair or
19 unjustly discriminatory methods under section
20 41104(a)(3) of title 46, United States Code, as amended
21 by this section. The Federal Maritime Commission shall
22 issue a final rule not later than 1 year after the date of
23 enactment of this Act.

24 (d) RULEMAKING ON UNREASONABLE REFUSAL TO
25 DEAL OR NEGOTIATE WITH RESPECT TO VESSEL SPACE

1 ACCOMMODATIONS.—Not later than 30 days after the
2 date of enactment of this Act, the Federal Maritime Com-
3 mission, in consultation with the Commandant of the
4 United States Coast Guard, shall initiate a rulemaking de-
5 fining unreasonable refusal to deal or negotiate with re-
6 spect to vessel space under section 41104(a)(10) of title
7 46, as amended by this section. The Federal Maritime
8 Commission shall issue a final rule not later than 6
9 months after the date of enactment of this Act.

10 **SEC. 8. ASSESSMENT OF PENALTIES OR REFUNDS.**

11 (a) IN GENERAL.—Title 46, United States Code, is
12 amended—

13 (1) in section 41107—

14 (A) in the section heading, by inserting
15 “**or refunds**” after “**penalties**”;

16 (B) in subsection (a), by inserting “or, in
17 addition to or in lieu of a civil penalty, is liable
18 for the refund of a charge” after “civil pen-
19 alty”; and

20 (C) in subsection (b), by inserting “or, in
21 addition to or in lieu of a civil penalty, the re-
22 fund of a charge,” after “civil penalty”; and

23 (2) section 41109 is amended—

24 (A) by striking subsections (a) and (b) and
25 inserting the following:

1 “(a) GENERAL AUTHORITY.—Until a matter is re-
2 ferred to the Attorney General, the Federal Maritime
3 Commission may—

4 “(1) after notice and opportunity for a hearing,
5 in accordance with this part—

6 “(A) assess a civil penalty; or

7 “(B) in addition to, or in lieu of, assessing
8 a civil penalty under subparagraph (A), order a
9 refund of money (including additional amounts
10 in accordance with section 41305(c)), subject to
11 subsection (b)(2); and

12 “(2) compromise, modify, or remit, with or
13 without conditions, a civil penalty or refund imposed
14 under paragraph (1).

15 “(b) DETERMINATION OF AMOUNT.—

16 “(1) FACTORS FOR CONSIDERATION.—In deter-
17 mining the amount of a civil penalty assessed or re-
18 fund of money ordered pursuant to subsection (a),
19 the Federal Maritime Commission shall take into
20 consideration—

21 “(A) the nature, circumstances, extent,
22 and gravity of the violation committed;

23 “(B) with respect to the violator—

24 “(i) the degree of culpability;

25 “(ii) any history of prior offenses;

1 “(iii) the ability to pay; and

2 “(iv) such other matters as justice
3 may require; and

4 “(C) the amount of any refund of money
5 ordered pursuant to subsection (a)(1)(B).

6 “(2) COMMENSURATE REDUCTION IN CIVIL
7 PENALTY.—

8 “(A) IN GENERAL.—In any case in which
9 the Federal Maritime Commission orders a re-
10 fund of money pursuant to subsection (a)(1)(B)
11 in addition to assessing a civil penalty pursuant
12 to subsection (a)(1)(A), the amount of the civil
13 penalty assessed shall be decreased by any addi-
14 tional amounts included in the refund of money
15 in excess of the actual injury (as defined in sec-
16 tion 41305(a)).

17 “(B) TREATMENT OF REFUNDS.—A re-
18 fund of money ordered pursuant to subsection
19 (a)(1)(B) shall be—

20 “(i) considered to be compensation
21 paid to the applicable claimant; and

22 “(ii) deducted from the total amount
23 of damages awarded to that claimant in a
24 civil action against the violator relating to
25 the applicable violation.”;

1 (B) in subsection (c), by striking “may not
2 be imposed” and inserting “or refund of money
3 under subparagraph (A) or (B), respectively, of
4 subsection (a)(1) may not be imposed”;

5 (C) in subsection (e), by inserting “or
6 order a refund of money” after “penalty”;

7 (D) in subsection (f), by inserting “, or
8 that is ordered to refund money,” after “as-
9 sessed”; and

10 (E) in subsection (g), in the first sentence,
11 by inserting “or a refund required under this
12 section” after “penalty”.

13 **SEC. 9. DATA COLLECTION.**

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

17 **“§ 41110. Data collection**

18 “The Federal Maritime Commission shall publish on
19 its website a calendar quarterly report that describes the
20 total import and export tonnage and the total loaded and
21 empty 20-foot equivalent units per vessel (making port in
22 the United States, including any territory or possession
23 of the United States) operated by each ocean common car-
24 rier covered under this chapter. Ocean common carriers
25 under this chapter shall provide to the Commission all nec-

1 essary information, as determined by the Commission, for
2 completion of this report.”.

3 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
4 tion, and the amendment made by this section, shall be
5 construed to compel the public disclosure of any confiden-
6 tial or proprietary data, in accordance with section
7 552(b)(4) of title 5, United States Code.

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

“41110. Data collection.”.

11 **SEC. 10. CHARGE COMPLAINTS.**

12 (a) **IN GENERAL.**—Chapter 413 of title 46, United
13 States Code, is amended by adding at the end the fol-
14 lowing:

15 **“§ 41310. Charge complaints**

16 “(a) **IN GENERAL.**—A person may submit to the
17 Federal Maritime Commission, and the Commission shall
18 accept, information concerning complaints about charges
19 assessed by a common carrier. The information submitted
20 to the Commission shall include the bill of lading numbers
21 and invoices, and may include any other relevant informa-
22 tion.

23 “(b) **INVESTIGATION.**—Upon receipt of a submission
24 under subsection (a), with respect to a charge assessed
25 by a common carrier, the Commission shall promptly in-

1 vestigate the charge with regard to compliance with sec-
2 tion 41104(a) and section 41102. The common carrier
3 shall—

4 “(1) be provided an opportunity to submit addi-
5 tional information related to the charge in question;
6 and

7 “(2) bear the burden of establishing the reason-
8 ableness of any demurrage or detention charges pur-
9 suant to section 545.5 of title 46, Code of Federal
10 Regulations (or successor regulations).

11 “(c) REFUND.—Upon receipt of submissions under
12 subsection (a), if the Commission determines that a
13 charge does not comply with section 41104(a) or 41102,
14 the Commission shall promptly order the refund of
15 charges paid.

16 “(d) PENALTIES.—In the event of a finding that a
17 charge does not comply with section 41104(a) or 41102
18 after submission under subsection (a), a civil penalty
19 under section 41107 shall be applied to the common car-
20 rier making such charge.

21 “(e) CONSIDERATIONS.—If the common carrier as-
22 sessing the charge is acting in the capacity of a non-vessel-
23 operating common carrier, the Commission shall, while
24 conducting an investigation under subsection (b), con-
25 sider—

1 “(1) whether the non-vessel-operating common
2 carrier is responsible for the noncompliant assess-
3 ment of the charge, in whole or in part; and

4 “(2) whether another party is ultimately re-
5 sponsible in whole or in part and potentially subject
6 to action under subsections (c) and (d).”.

7 (b) CLERICAL AMENDMENT.—The analysis for chap-
8 ter 413 of title 46, United States Code, is amended by
9 adding at the end the following:

“41310. Charge complaints.”.

10 **SEC. 11. INVESTIGATIONS.**

11 (a) AMENDMENTS.—Section 41302 of title 46,
12 United States Code, is amended—

13 (1) in subsection (a), in the first sentence, by
14 striking “or agreement” and inserting “agreement,
15 fee, or charge”; and

16 (2) in subsection (b)—

17 (A) in the subsection heading, by striking
18 “**Agreement**” and inserting “**Agreement,**
19 **fee, or charge**”; and

20 (B) by inserting “, fee, or charge” after
21 “agreement”.

22 (b) REPORT.—The Federal Maritime Commission
23 shall publish on a publicly available website of the Com-
24 mission a report containing the results of the investigation

1 entitled “Fact Finding No. 29, International Ocean
2 Transportation Supply Chain Engagement”.

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

4 Section 41305(c) of title 46, United States Code is
5 amended by striking “41102(b)” and inserting “sub-
6 section (b) or (c) of section 41102”.

7 **SEC. 13. ENFORCEMENT OF REPARATION ORDERS.**

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

10 (1) in subsection (a), by striking “reparation,
11 the person to whom the award was made” and in-
12 serting “a refund of money or reparation, the person
13 to which the refund or reparation was awarded”;
14 and

15 (2) in subsection (b), in the first sentence—

16 (A) by striking “made an award of repara-
17 tion” and inserting “ordered a refund of money
18 or any other award of reparation”; and

19 (B) by inserting “(except for the Commis-
20 sion or any component of the Commission)”
21 after “parties in the order”.

22 **SEC. 14. ANNUAL REPORT TO CONGRESS.**

23 Section 46106(b) of title 46, United States Code, is
24 amended—

1 (1) in paragraph (5), by striking “and” at the
2 end;

3 (2) in paragraph (6), by striking the period and
4 inserting “; and”; and

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

6 “(7) an identification of any otherwise con-
7 cerning practices by ocean common carriers, particu-
8 larly such carriers that are controlled carriers, that
9 are—

10 “(A) State-owned or State-controlled enter-
11 prises; or

12 “(B) owned or controlled by, a subsidiary
13 of, or otherwise related legally or financially
14 (other than a minority relationship or invest-
15 ment) to a corporation based in a country—

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

21 “(ii) identified by the United States
22 Trade Representative in the most recent
23 report required by section 182 of the
24 Trade Act of 1974 (19 U.S.C. 2242) as a

1 priority foreign country under subsection
2 (a)(2) of that section; or
3 “(iii) subject to monitoring by the
4 United States Trade Representative under
5 section 306 of the Trade Act of 1974 (19
6 U.S.C. 2416).”.

7 **SEC. 15. TECHNICAL AMENDMENTS.**

8 (a) Section 41108(a) of title 46, United States Code,
9 is amended by striking “section 41104(1), (2), or (7)” and
10 inserting “paragraph (1), (2), or (7) of section 41104(a)”.

11 (b) Section 41109(c) of title 46, United States Code,
12 as amended by section 8 of this Act, is further amended
13 by striking “section 41102(a) or 41104(1) or (2) of this
14 title” and inserting “subsection (a) or (d) of section 41102
15 or paragraph (1) or (2) of section 41104(a)”.

16 (c) Section 41305 of title 46, United States Code,
17 as amended by section 12 of this Act, is further amend-
18 ed—

19 (1) in subsection (c), by striking “41104(3) or
20 (6), or 41105(1) or (3) of this title” and inserting
21 “paragraph (3) or (6) of section 41104(a), or para-
22 graph (1) or (3) of section 41105”; and

23 (2) in subsection (d), by striking “section
24 41104(4)(A) or (B) of this title” and inserting “sub-
25 paragraph (A) or (B) of section 41104(a)(4)”.

1 **SEC. 16. DWELL TIME STATISTICS.**

2 (a) DEFINITIONS.—In this section:

3 (1) DIRECTOR.—The term “Director” means
4 the Director of the Bureau of Transportation Statis-
5 tics.

6 (2) MARINE CONTAINER.—The term “marine
7 container” means an intermodal container with a
8 length of—

9 (A) not less than 20 feet; and

10 (B) not greater than 45 feet.

11 (3) OUT OF SERVICE PERCENTAGE.—The term
12 “out of service percentage” means the proportion of
13 the chassis fleet for any defined geographical area
14 that is out of service at any one time.

15 (4) STREET DWELL TIME.—The term “street
16 dwell time”, with respect to a piece of equipment,
17 means the quantity of time during which the piece
18 of equipment is in use outside of the terminal.

19 (b) AUTHORITY TO COLLECT DATA.—

20 (1) IN GENERAL.—Each port, marine terminal
21 operator, and chassis owner or provider with a fleet
22 of over 50 chassis that supply chassis for a fee shall
23 submit to the Director such data as the Director de-
24 termines to be necessary for the implementation of
25 this section, subject to subchapter III of chapter 35
26 of title 44, United States Code.

1 (2) APPROVAL BY OMB.—Subject to the avail-
2 ability of appropriations, not later than 60 days
3 after the date of enactment of this Act, the Director
4 of the Office of Management and Budget shall ap-
5 prove an information collection for purposes of this
6 section.

7 (c) PUBLICATION.—Subject to the availability of ap-
8 propriations, not later than 240 days after the date of en-
9 actment of this Act, and not less frequently than monthly
10 thereafter, the Director shall publish statistics relating to
11 the dwell time of equipment used in intermodal transpor-
12 tation at the top 25 ports, including inland ports, by 20-
13 foot equivalent unit, including—

14 (1) total street dwell time, from all causes, of
15 marine containers and marine container chassis; and

16 (2) the average out of service percentage, which
17 shall not be identifiable with any particular port,
18 marine terminal operator, or chassis provider.

19 (d) FACTORS.—Subject to the availability of appro-
20 priations, to the maximum extent practicable, the Director
21 shall publish the statistics described in subsection (c) on
22 a local, regional, and national basis.

23 (e) SUNSET.—The authority under this section shall
24 expire December 31, 2026.

1 **SEC. 17. FEDERAL MARITIME COMMISSION ACTIVITIES.**

2 (a) **PUBLIC SUBMISSIONS TO COMMISSION.**—The
3 Federal Maritime Commission shall—

4 (1) establish on the public website of the Com-
5 mission a webpage that allows for the submission of
6 comments, complaints, concerns, reports of non-
7 compliance, requests for investigation, and requests
8 for alternative dispute resolution; and

9 (2) direct each submission under the link estab-
10 lished under paragraph (1) to the appropriate com-
11 ponent office of the Commission.

12 (b) **AUTHORIZATION OF OFFICE OF CONSUMER AF-
13 FAIRS AND DISPUTE RESOLUTION SERVICES.**—The Com-
14 mission shall maintain an Office of Consumer Affairs and
15 Dispute Resolution Services to provide nonadjudicative
16 ombuds assistance, mediation, facilitation, and arbitration
17 to resolve challenges and disputes involving cargo ship-
18 ments, household good shipments, and cruises subject to
19 the jurisdiction of the Commission.

20 (c) **ENHANCING CAPACITY FOR INVESTIGATIONS.**—

21 (1) **IN GENERAL.**—Pursuant to section 41302
22 of title 46, United States Code, not later than 18
23 months after the date of enactment of this Act, the
24 Chairperson of the Commission shall staff within the
25 Bureau of Enforcement, the Bureau of Certification
26 and Licensing, the Office of the Managing Director,

1 the Office of Consumer Affairs and Dispute Resolu-
2 tion Services, and the Bureau of Trade Analysis not
3 fewer than 7 total positions to assist in investiga-
4 tions and oversight, in addition to the positions with-
5 in the Bureau of Enforcement, the Bureau of Cer-
6 tification and Licensing, the Office of the Managing
7 Director, the Office of Consumer Affairs and Dis-
8 pute Resolution Services, and the Bureau of Trade
9 Analysis on that date of enactment.

10 (2) DUTIES.—The additional staff appointed
11 under paragraph (1) shall provide support—

12 (A) to Area Representatives of the Bureau
13 of Enforcement;

14 (B) to attorneys of the Bureau of Enforce-
15 ment in enforcing the laws and regulations sub-
16 ject to the jurisdiction of the Commission;

17 (C) for the alternative dispute resolution
18 services of the Commission; or

19 (D) for the review of agreements and ac-
20 tivities subject to the authority of the Commis-
21 sion.

22 **SEC. 18. TEMPORARY EMERGENCY AUTHORITY.**

23 (a) DEFINITIONS.—In this section:

1 (1) COMMON CARRIER.—The term “common
2 carrier” has the meaning given the term in section
3 40102 of title 46, United States Code.

4 (2) MOTOR CARRIER.—The term “motor car-
5 rier” has the meaning given the term in section
6 13102 of title 49, United States Code.

7 (3) RAIL CARRIER.—The term “rail carrier”
8 has the meaning given the term in section 10102 of
9 title 49, United States Code.

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

13 (b) PUBLIC INPUT ON INFORMATION SHARING.—

14 (1) IN GENERAL.—Not later than 60 days after
15 the date of enactment of this Act, the Federal Mari-
16 time Commission shall issue a request for informa-
17 tion, seeking public comment regarding—

18 (A) whether congestion of the carriage of
19 goods has created an emergency situation of a
20 magnitude such that there exists a substantial,
21 adverse effect on the competitiveness and reli-
22 ability of the international ocean transportation
23 supply system;

1 (B) whether an emergency order under
2 this section would alleviate such an emergency
3 situation; and

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

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

10 (A) other Federal departments and agen-
11 cies; and

12 (B) persons with expertise relating to mar-
13 itime and freight operations.

14 (c) AUTHORITY TO REQUIRE INFORMATION SHAR-
15 ING.—On making a unanimous determination described in
16 subsection (d), the Commission may issue an emergency
17 order requiring any common carrier or marine terminal
18 operator to share directly with relevant shippers, rail car-
19 riers, or motor carriers information relating to cargo
20 throughput and availability, in order to ensure the effi-
21 cient transportation, loading, and unloading of cargo to
22 or from—

23 (1) any inland destination or point of origin;

24 (2) any vessel; or

25 (3) any point on a wharf or terminal.

1 (d) DESCRIPTION OF DETERMINATION.—

2 (1) IN GENERAL.—A determination referred to
3 in subsection (c) is a unanimous determination by
4 the commissioners on the Commission that congest-
5 tion of carriage of goods has created an emergency
6 situation of a magnitude such that there exists a
7 substantial, adverse effect on the competitiveness
8 and reliability of the international ocean transpor-
9 tation supply system.

10 (2) FACTORS FOR CONSIDERATION.—In issuing
11 an emergency order pursuant to subsection (c), the
12 Commission shall tailor the emergency order with re-
13 spect to temporal and geographic scope, taking into
14 consideration the likely burdens on common carriers
15 and marine terminal operators and the likely bene-
16 fits on congestion relating to the purposes described
17 in section 40101 of title 46, United States Code.

18 (e) PETITIONS FOR EXCEPTION.—

19 (1) IN GENERAL.—A common carrier or marine
20 terminal operator subject to an emergency order
21 issued pursuant to this section may submit to the
22 Commission a petition for exception from 1 or more
23 requirements of the emergency order, based on a
24 showing of undue hardship or other condition ren-

1 dering compliance with such a requirement impracti-
2 cable.

3 (2) DETERMINATION.—The Commission shall
4 make a determination regarding a petition for excep-
5 tion under paragraph (1) by—

6 (A) majority vote; and

7 (B) not later than 21 days after the date
8 on which the petition is submitted.

9 (3) INAPPLICABILITY PENDING REVIEW.—The
10 requirements of an emergency order that is the sub-
11 ject of a petition for exception under this subsection
12 shall not apply to the petitioner during the period
13 for which the petition is pending.

14 (f) LIMITATIONS.—

15 (1) TERM.—An emergency order issued pursu-
16 ant to this section—

17 (A) shall remain in effect for a period of
18 not longer than 60 days; but

19 (B) may be renewed by a unanimous deter-
20 mination of the Commission.

21 (2) SUNSET.—The authority provided by this
22 section shall terminate on the date that is 18
23 months after the date of enactment of this Act.

24 (3) INVESTIGATIVE AUTHORITY UNAF-
25 FECTED.—Nothing in this section shall affect the in-

1 vestigative authorities of the Commission as de-
2 scribed in subpart R of part 502 of title 46, Code
3 of Federal Regulations.

4 **SEC. 19. BEST PRACTICES FOR CHASSIS POOLS.**

5 (a) IN GENERAL.—Not later than April 1, 2023, the
6 Federal Maritime Commission shall enter into an agree-
7 ment with the Transportation Research Board of the Na-
8 tional Academies of Sciences, Engineering, and Medicine
9 under which the Transportation Research Board shall
10 carry out a study and develop best practices for on-ter-
11 minal or near-terminal chassis pools that provide service
12 to marine terminal operators, motor carriers, railroads,
13 and other stakeholders that use the chassis pools, with the
14 goal of optimizing supply chain efficiency and effective-
15 ness.

16 (b) REQUIREMENTS.—In developing best practices
17 under subsection (a), the Transportation Research Board
18 shall—

19 (1) take into consideration—

20 (A) practical obstacles to the implementa-
21 tion of chassis pools; and

22 (B) potential solutions to those obstacles;

23 and

24 (2) address relevant communication practices,
25 information sharing, and knowledge management.

1 (c) PUBLICATION.—The Commission shall publish
2 the best practices developed under this section on a pub-
3 licly available website by not later than April 1, 2024.

4 (d) FUNDING.—Subject to appropriations, the Com-
5 mission may expend such sums as are necessary, but not
6 to exceed \$500,000, to carry out this section.

7 **SEC. 20. LICENSING TESTING.**

8 (a) IN GENERAL.—Not later than 90 days after the
9 date of enactment of this Act, the Administrator of the
10 Federal Motor Carrier Safety Administration (referred to
11 in this section as the “Administrator”) shall conduct a re-
12 view of the discretionary waiver authority described in the
13 document issued by the Administrator entitled “Waiver
14 for States Concerning Third Party CDL Skills Test Ex-
15 aminers In Response to the COVID–19 Emergency” and
16 dated August 31, 2021, for safety concerns.

17 (b) PERMANENT WAIVER.—If the Administrator
18 finds no safety concerns after conducting a review under
19 subsection (a), the Administrator shall—

20 (1) notwithstanding any other provision of law,
21 make the waiver permanent; and

22 (2) not later than 90 days after completing the
23 review under subsection (a), revise section 384.228
24 of title 49, Code of Federal Regulations, to provide

1 that the discretionary waiver authority referred to in
2 subsection (a) shall be permanent.

3 (c) REPORT.—If the Administrator declines to move
4 forward with a rulemaking for revision under subsection
5 (b), the Administrator shall explain the reasons for declin-
6 ing to move forward with the rulemaking in a report to
7 the Committee on Commerce, Science, and Transportation
8 of the Senate and the Committee on Transportation and
9 Infrastructure of the House of Representatives.

10 **SEC. 21. PLANNING.**

11 (a) AMENDMENT.—Section 6702(g) of title 49,
12 United States Code, is amended—

13 (1) by striking “Of the amounts” and inserting
14 the following:

15 “(1) IN GENERAL.—Of the amounts”; and

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

17 “(2) NONAPPLICABILITY OF CERTAIN LIMITA-
18 TIONS.—Subparagraphs (A) and (B) of subsection
19 (c)(2) shall not apply with respect to amounts made
20 available for planning, preparation, or design under
21 paragraph (1).”.

22 (b) EMERGENCY DESIGNATION.—Amounts for which
23 outlays are affected under the amendments made by sub-
24 section (a) that were previously designated by the Con-
25 gress as an emergency requirement pursuant to section

1 4112(a) of H. Con. Res. 71 (115th Congress), the concur-
2 rent resolution on the budget for fiscal year 2018, and
3 to section 251(b) of the Balanced Budget and Emergency
4 Deficit Control Act of 1985 are designated by the Con-
5 gress as an emergency requirement pursuant to section
6 4001(a)(1) and section 4001(b) of S. Con. Res. 14 (117th
7 Congress), the concurrent resolution on the budget for fis-
8 cal year 2022.

9 **SEC. 22. REVIEW OF POTENTIAL DISCRIMINATION AGAINST**
10 **TRANSPORTATION OF QUALIFIED HAZ-**
11 **ARDOUS MATERIALS.**

12 (a) **IN GENERAL.**—Not later than 90 days after the
13 date of enactment of this Act, the Comptroller General
14 of the United States shall initiate a review of whether
15 there have been any systemic decisions by ocean common
16 carriers to discriminate against maritime transport of
17 qualified hazardous materials by unreasonably denying
18 vessel space accommodations, equipment, or other instru-
19 mentalities needed to transport such materials. The
20 Comptroller General shall take into account any applicable
21 safety and pollution regulations.

22 (b) **CONSULTATION.**—The Comptroller General of the
23 United States may consult with the Commandant of the
24 Coast Guard and the Chair of the Federal Maritime Com-
25 mission in conducting the review under this section.

1 (c) DEFINITIONS.—In this section:

2 (1) HAZARDOUS MATERIALS.—The term “haz-
3 arduous materials” includes dangerous goods, as de-
4 fined by the International Maritime Dangerous
5 Goods Code.

6 (2) OCEAN COMMON CARRIER.—The term
7 “ocean common carrier” has the meaning given such
8 term in section 40102 of title 46, United States
9 Code.

10 (3) QUALIFIED HAZARDOUS MATERIALS.—The
11 term “qualified hazardous materials” means haz-
12 arduous materials for which the shipper has certified
13 to the ocean common carrier that such materials
14 have been or will be tendered in accordance with ap-
15 plicable safety laws, including regulations.

16 (4) SHIPPER.—The term “shipper” has the
17 meaning given such term in section 40102 of title
18 46, United States Code.

19 **SEC. 23. TRANSPORTATION WORKER IDENTIFICATION CRE-**
20 **DENTIALS.**

21 (a) DEFINITION OF DIRECT ASSISTANCE TO A
22 UNITED STATES PORT.—In this section:

23 (1) IN GENERAL.—The term “direct assistance
24 to a United States port” means the transportation
25 of cargo directly to or from a United States port.

1 (2) EXCLUSIONS.—The term “direct assistance
2 to a United States port” does not include—

3 (A) the transportation of a mixed load of
4 cargo that includes—

5 (i) cargo that does not originate from
6 a United States port; or

7 (ii) a container or cargo that is not
8 bound for a United States port;

9 (B) any period during which a motor car-
10 rier or driver is operating in interstate com-
11 merce to transport cargo or provide services not
12 in support of transportation to or from a
13 United States port; or

14 (C) the period after a motor carrier dis-
15 patches the applicable driver or commercial
16 motor vehicle of the motor carrier to another lo-
17 cation to begin operation in interstate com-
18 merce in a manner that is not in support of
19 transportation to or from a United States port.

20 (b) TRANSPORTATION WORKER IDENTIFICATION
21 CREDENTIALS.—The Administrator of the Transportation
22 Security Administration and the Commandant of the
23 Coast Guard shall jointly prioritize and expedite the con-
24 sideration of applications for a Transportation Worker
25 Identification Credential with respect to applicants that

1 reasonably demonstrate that the purpose of the Transpor-
2 tation Worker Identification Credential is for providing,
3 within the interior of the United States, direct assistance
4 to a United States port.

5 **SEC. 24. USE OF UNITED STATES INLAND PORTS FOR STOR-**
6 **AGE AND TRANSFER OF CARGO CONTAINERS.**

7 (a) MEETING.—Not later than 90 days after the date
8 of enactment of this Act, the Assistant Secretary for
9 Transportation Policy, in consultation with the Adminis-
10 trator of the Maritime Administration and the Chair-
11 person of the Federal Maritime Commission, shall convene
12 a meeting of representatives of entities described in sub-
13 section (b) to discuss the feasibility of, and strategies for,
14 identifying Federal and non-Federal land, including inland
15 ports, for the purposes of storage and transfer of cargo
16 containers due to port congestion.

17 (b) DESCRIPTION OF ENTITIES.—The entities re-
18 ferred to in subsection (a) are—

19 (1) representatives of United States major gate-
20 way ports, inland ports, and export terminals;

21 (2) ocean carriers;

22 (3) railroads;

23 (4) trucking companies;

24 (5) port workforce, including organized labor;

25 and

1 (6) such other stakeholders as the Secretary of
2 Transportation, in consultation with the Chairperson
3 of the Federal Maritime Commission, determines to
4 be appropriate.

5 (c) REPORT TO CONGRESS.—As soon as practicable
6 after the date of the meeting convened under subsection
7 (a), the Assistant Secretary for Transportation Policy, in
8 consultation with the Administrator of the Maritime Ad-
9 ministration and the Chairperson of the Federal Maritime
10 Commission, shall submit to Congress a report describ-
11 ing—

12 (1) the results of the meeting;

13 (2) the feasibility of identifying land or prop-
14 erty under the jurisdiction of United States, or ports
15 in the United States, for storage and transfer of
16 cargo containers; and

17 (3) recommendations relating to the meeting, if
18 any.

19 (d) SAVINGS PROVISION.—No authorization con-
20 tained in this section may be acted on in a manner that
21 jeopardizes or negatively impacts the national security or
22 defense readiness of the United States.

1 **SEC. 25. REPORT ON ADOPTION OF TECHNOLOGY AT**
2 **UNITED STATES PORTS.**

3 Not later than 1 year after the date of enactment
4 of this Act, the Comptroller General of the United States
5 shall submit to Congress a report describing the adoption
6 of technology at United States ports, as compared to that
7 adoption at foreign ports, including—

8 (1) the technological capabilities of United
9 States ports, as compared to foreign ports;

10 (2) an assessment of whether the adoption of
11 technology at United States ports could lower the
12 costs of cargo handling;

13 (3) an assessment of regulatory and other bar-
14 riers to the adoption of technology at United States
15 ports; and

16 (4) an assessment of technology and the work-
17 force.

18 **SEC. 26. AUTHORIZATION OF APPROPRIATIONS.**

19 Section 46108 of title 46, United States Code, is
20 amended by striking “\$29,086,888 for fiscal year 2020
21 and \$29,639,538 for fiscal year 2021” and inserting
22 “\$32,869,000 for fiscal year 2022, \$38,260,000 for fiscal

1 year 2023, \$43,720,000 for fiscal year 2024, and
2 \$49,200,000 for fiscal year 2025”.

Passed the Senate March 31, 2022.

Attest:

Secretary.

117TH CONGRESS
2^D SESSION
S. 3580

AN ACT

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