

OCEAN SHIPPING REFORM ACT OF 2022
SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section would provide the short title of the bill, Ocean Shipping Reform Act of 2022.

Section 2. Purposes

This section would amend the current purposes of the Shipping Act to also include that the act ensures an efficient, competitive, and economical ocean commerce and transportation system in the United States, as well as to “promote the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water in the foreign commerce of the United States, and by placing a greater reliance on the marketplace.”

Section 3. Service Contracts

This section would allow the Federal Maritime Commission (“FMC”) to determine other essential terms as necessary or appropriate for service contracts between shippers and ocean carriers.

Section 4. Shipping Exchange Registry

This bill would add a new section to the Shipping Act to authorize the creation of shipping exchange registries which would allow for private shipping exchanges to operate in the United States, and be regulated by the FMC. These exchanges provide a service to ocean carriers and shippers to mediate contract disputes. This service would cost the entities to participate, which is why only a portion of the market currently participates in exchanges. The FMC would have three years after enactment of S.3580 to issue the regulations to set the standards for exchanges.

Section 5. Prohibition on Retaliation

This section would add a new provision (d) to section 41102 of title 46, to prohibit a common carrier, marine terminal operator, or an ocean transportation intermediary, either alone or in conjunction with any other person, directly or indirectly, to retaliate against a shipper, a motor carrier, or an agent of such shipper or carrier. Specifically, S. 3580 would prohibit these entities from taking any action later described as refusing, or threatening to refuse, cargo space accommodations when available if the previously mentioned groups try to use a different ocean carrier, motor carrier, marine terminal operator or ocean transportation intermediary, or if those groups file a complaint with the FMC. This includes refusing, or threatening to refuse space on ship, when cargo space is available.

Section 6. Public Disclosure

This section would amend section 46106 of title 46 to require the FMC to disclose all findings of false demurrage and detention invoice information by common carriers and all penalties imposed or assessed against common carriers on a publicly accessible website. Demurrage is the charge to the shipper for using the container at the terminal beyond the time allowed in the contract, while detention is the charge for using the container outside of the terminal.

Section 7. Common Carriers

This section would amend section 41104 of title 46, to prevent common carriers from denying cargo space when it is available or assess demurrage and detention fees that are inconsistent with current and future Federal regulations, among other provisions. This section would require the FMC to finalize three rule makings in one year: (1) Demurrage or Detention rulemaking that would be initiated within 45 days, (2) Unfair or Unjustly Discriminatory Methods that would be initiated within 60 days, and (3) Unreasonable Refusal to Deal or Negotiate on vessel space accommodations that would be initiated within 30 days of enactment. This bill would add a new provision to require common carriers to submit invoices including detailed information each time demurrage and detention fees are charged. It would require that the common carrier certify that the fees are consistent with Federal regulations. If no invoice is received then there would be no obligation to pay the charge. In addition, a violation of the prohibition shall result in a penalty. There is also a provision to allow for safe harbor for non-vessel operating common carriers, entities that pass on the charge to shippers but are not be responsible for the charge.

Section 8. Assessment of Penalties or Refunds

This section would amend section 41107 of title 46, to allow for refunds in addition to penalties. The FMC's Fact Finding 29 interim recommendations found that the statute should be amended to allow for refunds as civil penalties go to the government, not the injured party. By amending the statute, the injured party will be able to receive direct relief instead of having to file a private party complaint. Further, the section outlines the consideration for determining a civil penalty shall include the nature, circumstances, extent and gravity of the violation committed, as well as the degree of culpability of the violator. Finally, the section allows for a reduction in civil penalty by the amount of the refund in excess of the actual injury.

Section 9. Data Collection

This section would amend chapter 411 of title 46, to require ocean carriers to submit to the FMC a quarterly report to include the total import and export tonnage and the total loaded empty 20-foot equivalent containers moving through ports in the United States and its territories. Nothing in this section may be used to compel the public disclosure of any confidential or proprietary data in accordance with the Freedom of Information Act (P.L. 89-487).

Section 10. Charge Complaints

This section would amend chapter 413 of title 46, the enforcement chapter of the Shipping Act, to add a new section regarding charge complaints. This section would allow individuals to submit information connected to a complaint to the FMC regarding charges assessed by carriers, including bill of lading numbers, invoices, or any other relevant information. S.3580 would require the FMC to promptly investigate the complaints and information. The burden would be shifted from the shipper (or individual complainant) to the common carrier to establish reasonableness of the demurrage and detention charges. This provision is intended to improve the ability for the FMC to pursue enforcement actions, which have been hampered by challenges accessing data or other information required to assess reasonableness, among other requirements. The FMC would be authorized to request additional information related to the charge. The FMC would be authorized to order refunds if the charge is not compliant with law. A civil penalty would also be able to be issued.

Section 11. Investigations

This section would amend section 41302 of title 46, to direct the FMC to investigate agreements, fees, and charges. This new section would also direct the FMC to publish on its website Fact Finding 29: International Ocean Transportation Supply Chain Engagement. Fact Finding 29 has been ongoing since 2020, with a final report forthcoming.

Section 12. Award of Additional Amounts

This section would amend section 41305(c) of title 46, to reflect the changes made in this bill and provides the FMC the authority to award reparations for violations of the common carriers section of the prohibitions chapter.

Section 13. Enforcement of Reparation Orders

This section would amend section 41309 of title 46, to include refunds or reparations.

Section 14. Annual Report to Congress

This section amends the FMC annual report to Congress to require the inclusion of any concerning practices identified regarding state-owned or state-controlled ocean carriers.

Section 15. Technical Amendments

This section would make several technical and conforming amendments.

Section 16. Dwell Time Statistics

This section would authorize the Bureau of Transportation Statistics (“BTS”) to collect data on dwell times for chassis to better quantify chassis availability. Shippers have reported potential chassis shortages since the onset of the COVID-19 pandemic. A chassis is a metal frame that a container is placed on for transportation by truck. Subject to appropriations, the Director of BTS shall publish certain dwell time statistics to a publicly accessible website not later than 240 days after enactment of this act, and monthly thereafter. This authority would sunset on December 31, 2026.

Section 17. Federal Maritime Commission Activities

This section would codify a number of activities of the FMC, including the establishment and maintenance of a publicly accessible website that may be used to file complaints, concerns, reports of non-compliance, requests for investigation and requests for alternative dispute resolution. The section would codify the FMC Office of Consumer Affairs and Dispute Resolution Services. This office would provide mediation, facilitation, and arbitration services to resolve challenges and disputes. This section would also require the Chair of the FMC to improve staffing required for investigations.

Section 18. Temporary Emergency Authority

This section would authorize the FMC to have temporary emergency authority to collect data, including public comment, during a period of substantial congestion. This provision would sunset after one year.

Section 19. Best Practices for Chassis Pools

This section would authorize the FMC to enter into an agreement with the National Academy of Sciences to conduct a study to evaluate best practices for chassis management. The study, which would require appropriations, would be authorized at \$500,000.

Section 20. Licensing Testing

This section requires the Federal Motor Carrier Safety Administration (“FMCSA”) to conduct a review of “Waiver for States Concerning Third Party CDL Skills Test Examiners In Response to the COVID–19 Emergency” for any safety concerns. After conducting the review, if the FMCSA does not find any concerns, the Administrator would be directed to make the waiver permanent and update the regulation accordingly. However, should the FMCSA find safety concerns and not move forward with the rulemaking, the Administrator would be required to report to the Committee their reasons for not moving forward with the rulemaking.

Section 21. Planning

This section includes a technical correction that would improve the Department of Transportation’s (“DOT”) Local and Regional Project Assistance grant program regarding planning grants authorized under section 6702 of title 49.

Section 22. Review of Potential Discrimination Against Transportation of Qualified Hazardous Materials

This section would require the Government Accountability Office (GAO) to initiate a review of potential discrimination by ocean common carriers against maritime transport of qualified hazardous materials, including potential unreasonable denial of vessel space accommodations or other instruments needed to transport such materials, taking into account any applicable safety and pollution regulations. This section would also require the GAO to initiate the review within 90 days of the bill’s enactment. This section would define hazardous materials, ocean common carrier, qualified hazardous materials, and shipper.

Section 23. Transportation Worker Identification Credentials

This section would require the Transportation Security Administration and the Coast Guard to prioritize and expedite the applications for a Transportation Worker Identification Credential (“TWIC”) for individuals who can demonstrate direct assistance to a United States port. This section would define direct assistance to a United States port to mean the transportation of cargo directly to or from a United States port, excluding the transportation of cargo that does not originate from a United States port or a container or cargo that is not bound for a United States port.

Section 24. Use of United States Inland Ports for Storage and Transfer of Cargo Containers

This section would require the DOT, within 90 days of enactment, to convene a meeting with stakeholders to discuss the feasibility of, and strategies for, the identification of Federal and non-federal land, including inland ports, to store and transfer cargo containers due to port congestion. This section would also require the DOT to submit recommendations, if they are any such recommendations, to Congress regarding the meeting.

Section 25. Report on the Adoption of Technology at United States Ports

This section would require the Assistant Secretary for Transportation Policy of the DOT to convene a meeting to discuss the feasibility of container storage within 90 days of enactment. The meeting participants must include the Administrator of the Maritime Administration, the FMC, and representatives from gateway ports, inland ports, export terminals, ocean carriers, railroads, trucking companies, port workforce including organized labor, and other stakeholders as the DOT determines. This section would also require the Assistant Secretary to submit recommendations, if any, to Congress regarding the meeting.

Section 26. Authorization of Appropriations

This section would amend section 46108 of title 46, to authorize appropriations for the FMC not to exceed \$32,869,000 for fiscal year 2022, \$38,260,000 for fiscal year 2023, \$43,720,000 for fiscal year 2024, and \$49,200,000 for fiscal year 2025. This represents a 50 percent increase in authorization of funding by 2025.