

FEDERAL MARITIME COMMISSION AUTHORIZATION ACT
OF 2017

NOVEMBER 13, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2593]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 2593) to authorize appropriations for the
Federal Maritime Commission for fiscal years 2018 and 2019, and
for other purposes, having considered the same, report favorably
thereon with an amendment and recommend that the bill as
amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Maritime Commission Authorization Act of 2017”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL MARITIME COMMISSION

Sec. 101. Authorization.
 Sec. 102. Port services.
 Sec. 103. Information.
 Sec. 104. Ocean transportation intermediaries.
 Sec. 105. Interrelated agreements.

TITLE II—OTHER MATTERS

Sec. 201. Fishing safety grants.
 Sec. 202. Assistance for small shipyards.
 Sec. 203. Treatment of fishing permits.
 Sec. 204. Centers of excellence.

TITLE I—FEDERAL MARITIME COMMISSION

SEC. 101. AUTHORIZATION.

Section 308 of title 46, United States Code, is amended by striking “\$24,700,000 for each of fiscal years 2016 and 2017” and inserting “\$28,012,310 for fiscal year 2018 and \$28,544,543 for fiscal year 2019”.

SEC. 102. PORT SERVICES.

(a) **DEFINITIONS.**—Section 40102 of title 46, United States Code, is amended by adding at the end the following:

“(26) **PORT SERVICES.**—The term ‘port services’ means intermediary services provided to an ocean carrier at a United States port to facilitate vessels operated by such a carrier to operate and load and unload cargo at such port, including towage, cargo handling, and bunkering.”.

(b) **CONCERTED ACTION.**—Section 41105 of title 46, United States Code, is amended—

- (1) in paragraph (7) by striking “or” at the end;
- (2) in paragraph (8) by striking the period at the end and inserting “;”;
- (3) by adding at the end the following:

“(9) negotiate with a provider of port services, other than a provider of towing vessel services, on any matter relating to rates or services provided within the United States by such provider, unless advance notice is provided to the Federal Maritime Commission of the intent and need for the negotiation, the negotiation and any resulting agreement are not in violation of the antitrust laws and are consistent with the purposes of this part, and, as determined by the Commission, the negotiation and any resulting agreement will not substantially lessen competition in the purchasing of port services provided at United States ports (this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of common carriers); or

“(10) negotiate with a provider of towing vessel services on any matter relating to rates or services provided within the United States by towing vessels.”.

(c) **INJUNCTIVE RELIEF SOUGHT BY THE COMMISSION.**—Section 41307(b) of title 46, United States Code, is amended—

(1) in paragraph (1) by striking “produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost” and inserting “produce an unreasonable reduction in transportation service, produce an unreasonable increase in transportation cost, or substantially lessen competition in the purchasing of port services”; and

(2) by adding at the end the following:

“(4) **COMPETITION FACTORS.**—In making a determination under this subsection, the Commission may consider any relevant competition factors in affected markets, including, without limitation, the competitive effect of agreements other than the agreement under review.”.

SEC. 103. INFORMATION.

(a) **REPORTS FILED WITH THE COMMISSION.**—Section 40104(a) of title 46, United States Code, is amended—

(1) by inserting “, marine terminal operator, or ocean transportation intermediary,” after “common carrier”;

(2) by inserting “, operator, or intermediary,” after “employee of the carrier”; and

(3) by inserting “, operator, or intermediary” after “business of the carrier”.
 (b) COMMISSION ACTION.—Section 40304 of title 46, United States Code, is amended—

- (1) in subsection (a) by inserting “, and interested persons may submit relevant information and documents to the Commission” after “publication”; and
- (2) in subsection (d) by striking “to make the determinations required by this section”.

SEC. 104. OCEAN TRANSPORTATION INTERMEDIARIES.

(a) LICENSE REQUIREMENT.—Section 40901(a) of title 46, United States Code, is amended by inserting “advertise, hold oneself out, or” after “may not”.

(b) FINANCIAL RESPONSIBILITY.—Section 40902(a) of title 46, United States Code, is amended by inserting “advertise, hold oneself out, or” after “may not”.

(c) COMMON CARRIERS.—Section 41104(11) of title 46, United States Code, is amended by striking “a tariff as required by section 40501 of this title and”.

SEC. 105. INTERRELATED AGREEMENTS.

(a) COMMON CARRIERS.—Section 41104 of title 46, United States Code, is amended—

- (1) in paragraph (11) by striking “or” at the end;
- (2) in paragraph (12) by striking the period at the end and inserting “; or”; and
- (3) by adding at the end the following:

“(13) participate in a rate discussion agreement and a vessel sharing agreement, slot sharing agreement, space sharing agreement, or similar agreement for use of vessels by two or more ocean common carriers, unless the Commission has granted the parties an exemption pursuant to section 40103.”

(b) APPLICABILITY.—Participants in an agreement in effect on the date of enactment of this Act and prohibited as a result of the amendment made in subsection (a) shall have 1 year from such date of enactment to—

- (1) obtain an exemption from the application of section 41104(13) of title 46, United States Code, pursuant to section 40103 of such title; or
- (2) withdraw from the agreement as necessary to comply with such section 41104(13).

TITLE II—OTHER MATTERS

SEC. 201. FISHING SAFETY GRANTS.

Section 4502 of title 46, United States Code, is amended—

- (1) in subsections (i) and (j), by striking “Secretary” each place it appears and inserting “Secretary of Commerce”;
- (2) in subsection (i)(3), by striking “75” and inserting “50”;
- (3) in subsection (j)(4), by striking “\$3,000,000 for each of fiscal years 2015 through 2017” and inserting “\$3,000,000 for each of fiscal years 2018 through 2019”;
- (4) in subsection (j)(3), by striking “75” and inserting “50”; and
- (5) in subsection (j)(4), by striking “\$3,000,000 for each fiscal years 2015 through 2017” and inserting “\$3,000,000 for each of fiscal years 2018 through 2019”.

SEC. 202. ASSISTANCE FOR SMALL SHIPYARDS.

(a) IN GENERAL.—Section 54101 of title 46, United States Code, is amended—

- (1) in the section heading, by striking “**and maritime communities**”;
- (2) in subsection (a)(2), by striking “in communities” and all that follows through the period and inserting “relating to shipbuilding, ship repair, and associated industries.”;
- (3) in subsection (b), by amending paragraph (1) to read as follows:
 - “(1) consider projects that foster—
 - “(A) efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and
 - “(B) employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries; and”;
- (4) in subsection (c)(1)—
 - (A) by inserting “to” after “may be used”; and
 - (B) by striking subparagraphs (A), (B), and (C) and inserting the following:
 - “(A) make capital and related improvements in small shipyards; and
 - “(B) provide training for workers in shipbuilding, ship repair, and associated industries.”;

(5) in subsection (d), by striking “unless” and all that follows before the period;

(6) in subsection (e)—

(A) by striking paragraph (2);

(B) by redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (1) by striking “Except as provided in paragraph (2),”;

and

(7) in subsection (i), by striking “2015” and all that follows before the period and inserting “2018 and 2019 to carry out this section \$30,000,000”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 541 of title 46, United States Code, is amended by striking the item relating to section 54101 and inserting the following:

“54101. Assistance for small shipyards.”.

SEC. 203. TREATMENT OF FISHING PERMITS.

(a) IN GENERAL.—Subchapter I of chapter 313 of title 46, United States Code, is amended by adding at the end the following:

“§ 31310. Treatment of fishing permits

“(a) LIMITATION ON MARITIME LIENS.—This chapter—

“(1) does not establish a maritime lien on a fishing permit; and

“(2) does not authorize any civil action to enforce a maritime lien on a fishing permit.

“(b) TREATMENT OF FISHING PERMITS UNDER STATE AND FEDERAL LAW.—A fishing permit—

“(1) is governed solely by the State or Federal law under which it is issued; and

“(2) shall not be treated as part of a vessel, or as an appurtenance or intangible of a vessel, for any purpose under Federal law.

“(c) AUTHORITY OF SECRETARY OF COMMERCE NOT AFFECTED.—Nothing in this section shall be construed as imposing any limitation upon the authority of the Secretary of Commerce—

“(1) to modify, suspend, revoke, or impose a sanction on any fishing permit issued by the Secretary of Commerce; or

“(2) to bring a civil action to enforce such a modification, suspension, revocation, or sanction.

“(d) FISHING PERMIT DEFINED.—In this section the term ‘fishing permit’ means any authorization of a person or vessel to engage in fishing that is issued under State or Federal law.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 31309 the following:

“31310. Treatment of fishing permits.”.

SEC. 204. CENTERS OF EXCELLENCE.

(a) IN GENERAL.—Chapter 541 of title 46, United States Code, is amended by adding at the end the following:

“§ 54102. Centers of excellence for domestic maritime workforce training and education

“(a) DESIGNATION.—The Secretary of Transportation may designate as a center of excellence for domestic maritime workforce training and education a covered training entity located in a State that borders on the—

“(1) Gulf of Mexico;

“(2) Atlantic Ocean;

“(3) Long Island Sound;

“(4) Pacific Ocean;

“(5) Great Lakes; or

“(6) Mississippi River System.

“(b) ASSISTANCE.—The Secretary may enter into a cooperative agreement (as that term is used in section 6305 of title 31) with a center of excellence designated under subsection (a) to support maritime workforce training and education at the center of excellence, including efforts of the center of excellence to—

“(1) admit additional students;

“(2) recruit and train faculty;

“(3) expand facilities;

“(4) create new maritime career pathways; or

“(5) award students credit for prior experience, including military service.

“(c) COVERED TRAINING ENTITY DEFINED.—In this section, the term ‘covered training entity’ means an entity that is—

“(1) a community or technical college; or

“(2) a maritime training center—

“(A) operated by, or under the supervision of, a State; and

“(B) with a maritime training program in operation on the date of enactment of this section.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 541 of title 46, United States Code, is amended by inserting after the item relating to section 54101 the following:

“54102. Centers of excellence for domestic maritime workforce training and education.”.

PURPOSE OF LEGISLATION

H.R. 2593, the *Federal Maritime Commission Authorization Act of 2017*, authorizes funding for the Federal Maritime Commission (FMC or Commission) for fiscal years 2018 and 2019 at increased levels and includes reforms to Commission authorities under Subtitle IV, Regulation of Ocean Shipping, of title 46, United States Code, regarding reviews of carrier agreements.

BACKGROUND AND NEED FOR LEGISLATION

The *Shipping Act of 1984* (46 United States Code §§ 40101–41309) establishes a regulatory process for the common carriage of goods by water in the foreign commerce of the United States. This process is to be carried out by the Commission. The FMC is tasked with reviewing agreements filed by ocean carriers with the Commission to ensure open competition among carriers and fair pricing for shipping services to U.S. importers and exporters. Ocean carriers that comply with the policies of the Act are granted a limited antitrust exemption pursuant to agreements filed with the FMC. In general, the fair competition and anti-trust standards under the Subtitle IV are comparable to other anti-trust statutes (e.g., the *Sherman Anti-Trust Act* (26 Stat. 209, 15 United States Code §§ 1–7), the *Clayton Act* (15 United States Code §§ 12–27, 29 United States Code §§ 52–53) and *Federal Trade Commission Act* (15 United States Code §§ 41–58)).

Additionally, Subtitle IV creates a regulatory process with minimal government intervention and regulatory costs. Nevertheless, when carriers discuss, fix, or regulate transportation rates, as well as other conditions of service, agreements must be filed with the Commission for review. During the Commission’s review, the terms of an agreement may be adjusted to address concerns raised by the Commission. The Commission does not have, however, explicit authority to disapprove of an agreement. Rather, the Commission must seek injunctive relief in federal court to stay an agreement from going into effect. Filing for injunctive relief by the Commission is exceedingly rare and the vast majority of agreements (modified to address Commission concerns) automatically become effective 45 days after filing.

The liner shipping industry has not yet recovered from the global recession that began in 2008. The continuing weakness in global trade growth, intense competition, a mismatch between the supply of vessel capacity and the demand to move cargo, the need for more energy efficient vessels, and historically low freight rates led industry to make fundamental changes to continue to provide ocean transportation services. Industry has worked to find efficiencies wherever they could. Efficiency measures have included technological innovations such as highly fuel efficient new vessels and vessel sharing agreements, commonly referred to “alliances”. The

alliances allow carriers to share vessel assets to move cargo to reduce the oversupply of capacity. While the Commission testified that the international ocean liner industry is not concentrated, the ability to form an alliance and collectively negotiate has raised concerns about carrier consolidation and impacts it may have on shippers and port service providers.

The Commission allowed an amendment to a roll-on roll-off carrier agreement¹ which went into effect on January 23, 2017. American maritime industry stakeholders raised concerns with the amendment due to the inclusion of language allowing ocean carriers to collectively negotiate rates with American maritime service providers, including tugboat operators, which industry stakeholders claim would be disadvantaged by such negotiations. In March 2017, the Commission received another agreement,² which also would permit ocean carrier alliances to jointly negotiate with American maritime service providers. American maritime stakeholders again raised concerns regarding maritime service providers having no counterbalancing ability to take collective action.

HEARINGS

On May 3, 2017, the Subcommittee on Coast Guard and Maritime Transportation held a hearing on maritime transportation regulatory issues. The Subcommittee heard testimony from the Commission, American Waterways Operators, and the World Shipping Council. Concerns were raised regarding the existing Commission review process of ocean carrier alliance agreements and the impact such agreements may have on American port service providers.

LEGISLATIVE HISTORY AND CONSIDERATION

On May 23, 2017, H.R. 2593 was introduced by Congressman Duncan Hunter (R-CA) and cosponsored by Congressman John Garamendi (D-CA), Congressman Bill Shuster (R-PA), and Congressman Peter DeFazio (D-OR). The bill was referred solely to the Committee on Transportation and Infrastructure.

On May 24, 2017, the Committee on Transportation and Infrastructure met in open session to consider H.R. 2593. Congressman Hunter offered an amendment to the bill that would further clarify that ocean carrier alliances could not negotiate with providers of tug vessel services. The amendment was adopted by voice vote. The Committee ordered the bill, as amended, reported favorably to the House by voice vote with a quorum present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those Members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 2593.

¹ WWL/EUKOR/ARC/GLOVIS Cooperative Working Agreement (FMC No. 012309-001).

² The Tripartite Agreement (FMC Agreement No. 012475).

A motion to order H.R. 2593, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 2593 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2017.

Hon. BILL SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2593, the Federal Maritime Commission Authorization Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2593—Federal Maritime Commission Authorization Act of 2017

Summary: H.R. 2593 would authorize appropriations totaling \$129 million over the 2018–2019 period for activities related to waterborne transportation and commerce. Assuming appropriation of the authorized amounts, CBO estimates that enacting the bill would cost \$129 million over the 2018–2022 period.

Enacting H.R. 2593 would decrease revenues by an insignificant amount; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect direct spending.

CBO estimates that enacting H.R. 2593 would not increase net direct spending or significantly affect on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2593 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act

(UMRA). CBO estimates that the cost of the mandate on public entities would fall below the annual threshold established in UMRA for intergovernmental mandates (\$78 million in 2017, adjusted annually for inflation). CBO cannot determine whether the cost of the mandates on private-entities would exceed the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2593 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2018	2019	2020	2021	2022	2018–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	64	65	0	0	0	129
Estimated Outlays	41	52	20	13	3	129

Basis of estimate: H.R. 2593 would authorize appropriations totaling \$64 million in 2018 and \$65 million in 2019 for activities related to waterborne transportation and commerce. (CBO estimates that funding for those activities in 2017 totals \$37 million.) Those authorizations include:

- \$30 million in each year for the Maritime Administration to make grants to support capital and related improvements at small shipyards;
- \$28 million in 2018 and \$29 million in 2019 for expenses of the Federal Maritime Commission, which regulates oceanborne transportation related to U.S. foreign commerce; and
- \$6 million in each year for the Department of Commerce to make grants to support efforts to improve the safety of commercial fishing.

Based on historical spending patterns for existing and similar activities, CBO estimates that implementing H.R. 2593 would cost \$129 million over the 2018–2022 period, assuming appropriation of the authorized amounts.

Pay-As-You-Go Considerations: The bill would specify a different treatment of commercial fishing permits under federal laws, which could reduce the scope of civil actions pursued through federal courts to enforce maritime liens. Such a change in scope would reduce revenues from court filing fees; therefore, pay-as-you-go procedures apply. Based on the relatively small number of cases likely to be affected, CBO estimates that any decrease in revenues would be insignificant. (The federal costs to administer court proceedings would be insignificant and subject to appropriation.)

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 2593 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 2593 would impose intergovernmental and private-sector mandates as defined in UMRA. CBO estimates that the cost of the mandate on public entities would fall below the annual threshold established in UMRA for intergovernmental mandates (\$78 million in 2017, adjusted annually for inflation). Because the cost of the private-sector mandates would depend, in part, on the outcome of hearings held

by the Federal Maritime Commission (FMC), CBO cannot determine whether the cost of the mandates on private-entities would exceed the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

Mandates that apply to both public and private entities

The bill would impose intergovernmental and private-sector mandates on ocean transportation intermediaries and operators of marine terminals such as port authorities by requiring those entities to submit reports on their business activities to the FMC if requested. CBO estimates that the cost of complying with the reporting requirement would be small.

Mandates that apply to private entities only

The bill also would impose a mandate on ocean carriers by prohibiting a carrier from participating in a vessel sharing agreement and a rate discussion agreement without an exemption from the FMC. The cost of the mandate would include the cost of preparing for an administrative hearing and any losses of income the carrier would incur because the carrier may no longer participate in a vessel sharing agreement if no exemption is granted. Based on information from industry sources, CBO estimates that the administrative costs would be small, particularly if the FMC provides an exemption to classes of agreements that meet certain criteria. However, the costs of the prohibition could be substantial, totaling hundreds of millions of dollars, if a carrier could not obtain an exemption and would have to terminate an agreement. CBO cannot determine the likelihood or frequency of potential exceptions that would be granted by FMC. Consequently, we cannot estimate whether the costs of the mandate would be substantial relative to the annual threshold established in UMRA.

The bill also would impose a mandate on ocean carriers by prohibiting them from jointly negotiating agreements with tug operators and subjecting other joint negotiations to antitrust laws, which could result in higher costs. That is, the bill would prohibit ocean carriers from jointly negotiating with providers of some services at ports unless those negotiations meet the criteria of federal antitrust laws. Currently, only one group of ocean carriers has the authority to jointly negotiate with tug operators, and that authority has not yet been used. Based on those facts and information from industry sources, CBO estimates that the costs of those mandates would not be substantial in the first few years the mandate is in effect.

Estimate prepared by: Federal costs: Megan Carroll; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to authorize appropriations for the FMC and modify FMC's authorities with regard to ocean car-

rier alliance agreements and negotiations with U.S. port service providers that may result from such agreements.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2593 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee finds that enacting H.R. 2593 does not direct the completion of a specific rule making within the meaning of section 551 of title 5, United States Code.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act* (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 2593 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No new advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 101. Authorization

This section amends section 308 of title 46, United States Code, to authorize funding levels for the Commission for fiscal years 2018 and 2019 that match the fiscal year 2017 appropriation of \$27.4 million adjusted annually for inflation.

Section 102. Port services

This section amends section 40102 of title 46, United States Code, to include a new paragraph (26) which defines port services as an intermediary services provider to an ocean carrier at an American port to facilitate vessels operated by such carrier to operate, and load and unload cargo at the port. This amendment expands the scope of Subtitle IV to now include consideration of American port service providers.

This section also amends section 41105 of title 46, United States Code, the concerted actions section, to include new paragraphs (9) and (10). The new paragraph (9) stipulates that a conference or group of two or more carriers may not negotiate with a provider of port services on any matter relating to rates or service provided. The paragraph does provide an exception to allow negotiations, if advance notice is provided to the Commission, the negotiation and resulting agreement are not in violation of anti-trust laws and are consistent with the Shipping Act, and the resulting agreement will not lessen competition, as determined by the Commission. Towing vessels are not included in the exception language. The new paragraph (10) states that a conference or group of two or more carriers may not negotiate with providers of towing vessel services.

This section additionally amends section 41307(b) of title 46, United States Code, to strike “produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost”. Inserted in its place is “produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, or substantially lessen competition in the purchasing of port services.” A new paragraph (4) is added at the end regarding competition factors. It would allow the Commission to consider any relevant competition factors in affected markets, including other agreements, other than the agreement under review. These amendments broaden the scope of the Commission’s competition analysis to ensure the maintenance of fair competition in the purchasing and pricing of U.S. port services.

Section 103. Information

This section amends the report section, section 40101(a) of title 46, United States Code, to include “marine terminal operator or ocean transportation intermediary” and employees of these two entities in the list of entities the Federal Maritime Commission may require a report, account, record, rate, or charge, or a memorandum of facts and transactions related to the business of such entities.

The section also amends section 40304 of title 46, United States Code, to include “, and interested persons may submit relevant information and documents to the Commission” after “publication”.

In 40304(d) the language “to make the determination required by this section” is removed.

Both amendments should bolster the ability of the Commission to gather additional information to best evaluate conditions in affected markets and factors affecting competition among carriers and American port service providers.

Section 104. Ocean transportation intermediaries

This section amends the license requirement section, section 40901(a) of title 46, United States Code, and the financial responsibility section, section 40902(a) of title 46, United States Code, to insert “advertise, hold oneself out, or” after “may not”.

This section also amends section 41104(11) of title 46, United States Code, to strike “a tariff as required by section 40501 of this title and”. These amendments were requested by the Commission.

Section 105. Interrelated agreements

This section amends section 41104 of title 46, United States Code, to include language that says a common carrier alone, or in conjunction with any other person, may not participate in any agreements (i.e., rate discussions, vessel sharing, slot-sharing, or space-sharing) unless the Commission has granted a waiver under section 40103.

The section also allows participants in agreements that would be prohibited due to amendments made in subsection (a) to obtain an exemption or withdraw from such agreement. These amendments also were requested by the Commission.

Title II—Other Matters

Section 201. Fishing safety grants

This section amends section 4502 of title 46, United States Code, to transfer each the grant program from the Coast Guard to the Secretary of Commerce. Authorized funding for each grant programs is \$3 million which matches the fiscal year 2017 appropriated levels and the level at which the program was previously authorized. The cost share for each grant program is reduced from 75 percent to 50 percent.

Section 202. Assistance for small shipyards

This section amends section 54101 of title 46, United States Code, to clarify that training provided under the section is related to shipbuilding, ship repair, and associated industries. The section reauthorizes \$30 million for each fiscal year 2018 and 2019.

Section 203. Treatment of fishing permits

This section adds a new section 31310 in chapter 313 of title 46, United States Code. The new section would clarify that chapter 313 does not establish a maritime lien on a fishing permit and does not authorize any civil action to enforce a maritime lien on a fishing permit. It also clarifies that a fishing permit is governed solely by a State or federal law under which it was issued and shall not be treated as part of a vessel, or as an appurtenance or intangible of a vessel, for any purpose under federal law.

This section also clarifies that the authorities of the Secretary of Commerce are not affected and “fishing permit” means “any authorization of a person or vessel to engage in a fishery that is issued under State or federal law”.

Section 204. Centers of excellence

This section adds a section 54102 at the end of chapter 541 of title 46, United States Code, which would allow the Secretary of Transportation to designate a covered trained entity as a center for excellence for domestic maritime work force training and education through the use of a cooperative agreement.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 46, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 3—FEDERAL MARITIME COMMISSION

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§ 308. Authorization of appropriations

There is authorized to be appropriated to the Federal Maritime Commission **【\$24,700,000 for each of fiscal years 2016 and 2017】** *\$28,012,310 for fiscal year 2018 and \$28,544,543 for fiscal year 2019* for the activities of the Commission authorized under this chapter and subtitle IV.

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SUBTITLE II—VESSELS AND SEAMEN

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**PART B—INSPECTION AND REGULATION OF
VESSELS**

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**CHAPTER 45—UNINSPECTED COMMERCIAL FISHING
INDUSTRY VESSELS**

* * * * *

§ 4502. Safety standards

(a) The Secretary shall prescribe regulations which require that each vessel to which this chapter applies shall be equipped with—

(1) readily accessible fire extinguishers capable of promptly and effectively extinguishing a flammable or combustible liquid fuel fire;

(2) at least one readily accessible life preserver or other life-saving device for each individual on board;

(3) an efficient flame arrestor, backfire trap, or other similar device on the carburetors of each inboard engine which uses gasoline as fuel;

(4) the means to properly and efficiently ventilate enclosed spaces, including engine and fuel tank compartments, so as to remove explosive or flammable gases;

(5) visual distress signals;

(6) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment; and

(7) a placard as required by regulations prescribed under section 10603(b) of this title.

(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for vessels to which this chapter applies that—

(A) operate beyond 3 nautical miles from the baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes;

(B) operate with more than 16 individuals on board; or

(C) in the case of a fish tender vessel, engage in the Aleutian trade.

(2) The equipment to be required is as follows:

(A) alerting and locating equipment, including emergency position indicating radio beacons;

(B) a survival craft that ensures that no part of an individual is immersed in water sufficient to accommodate all individuals on board;

(C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

(D) marine radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

- (E) navigation equipment, including compasses, nautical charts, and publications;
 - (F) first aid equipment and medical supplies sufficient for the size and area of operation of the vessel; and
 - (G) ground tackle sufficient for the vessel.
- (c)(1) In addition to the requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing the standards in paragraph (2) of this subsection for vessels to which this chapter applies that—
- (A)(i) were built after December 31, 1988, or undergo a major conversion completed after that date; and
 - (ii) operate with more than 16 individuals on board;
- or
- (B) in the case of a fish tender vessel, engage in the Aleutian trade.
- (2) The standards shall be minimum safety standards, including standards relating to—
- (A) navigation equipment, including radars and fathometers;
 - (B) lifesaving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;
 - (C) fire protection and firefighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;
 - (D) use and installation of insulation material;
 - (E) storage methods for flammable or combustible material; and
 - (F) fuel, ventilation, and electrical systems.
- (d)(1) The Secretary shall prescribe regulations for the operating stability of a vessel to which this chapter applies—
- (A) that was built after December 31, 1989; or
 - (B) the physical characteristics of which are substantially altered after December 31, 1989, in a manner that affects the vessel's operating stability.
- (2) The Secretary may accept, as evidence of compliance with this subsection, a certification of compliance issued by the person providing insurance for the vessel or by another qualified person approved by the Secretary.
- (e) In prescribing regulations under this chapter, the Secretary—
- (1) shall consider the specialized nature and economics of the operations and the character, design, and construction of the vessel; and
 - (2) may not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulation.
- (f) To ensure compliance with the requirements of this chapter, the Secretary—
- (1) shall require the individual in charge of a vessel described in subsection (b) to keep a record of equipment maintenance, and required instruction and drills;
 - (2) shall examine at dockside a vessel described in subsection (b) at least once every 5 years, and shall issue a certificate of compliance to a vessel meeting the requirements of this chapter; and

(3) shall complete the first dockside examination of a vessel under this subsection not later than October 15, 2015.

(g)(1) The individual in charge of a vessel described in subsection (b) must pass a training program approved by the Secretary that meets the requirements in paragraph (2) of this subsection and hold a valid certificate issued under that program.

(2) The training program shall—

(A) be based on professional knowledge and skill obtained through sea service and hands-on training, including training in seamanship, stability, collision prevention, navigation, fire fighting and prevention, damage control, personal survival, emergency medical care, emergency drills, and weather;

(B) require an individual to demonstrate ability to communicate in an emergency situation and understand information found in navigation publications;

(C) recognize and give credit for recent past experience in fishing vessel operation; and

(D) provide for issuance of a certificate to an individual that has successfully completed the program.

(3) The Secretary shall prescribe regulations implementing this subsection. The regulations shall require that individuals who are issued a certificate under paragraph (2)(D) must complete refresher training at least once every 5 years as a condition of maintaining the validity of the certificate.

(4) The Secretary shall establish an electronic database listing the names of individuals who have participated in and received a certificate confirming successful completion of a training program approved by the Secretary under this section.

(h) A vessel to which this chapter applies shall be constructed in a manner that provides a level of safety equivalent to the minimum safety standards the Secretary may establish for recreational vessels under section 4302, if—

(1) subsection (b) of this section applies to the vessel;

(2) the vessel is less than 50 feet overall in length; and

(3) the vessel is built after January 1, 2010.

(i)(1) The **Secretary** *Secretary of Commerce* shall establish a Fishing Safety Training Grants Program to provide funding to municipalities, port authorities, other appropriate public entities, not-for-profit organizations, and other qualified persons that provide commercial fishing safety training—

(A) to conduct fishing vessel safety training for vessel operators and crewmembers that—

(i) in the case of vessel operators, meets the requirements of subsection (g); and

(ii) in the case of crewmembers, meets the requirements of subsection (g)(2)(A), such requirements of subsection (g)(2)(B) as are appropriate for crewmembers, and the requirements of subsections (g)(2)(D), (g)(3), and (g)(4); and

(B) for purchase of safety equipment and training aids for use in those fishing vessel safety training programs.

(2) The **Secretary** *Secretary of Commerce* shall award grants under this subsection on a competitive basis.

(3) The Federal share of the cost of any activity carried out with a grant under this subsection shall not exceed **[75]** 50 percent.

(4) There is authorized to be appropriated **[\$3,000,000 for each of fiscal years 2015 through 2017]** *\$3,000,000 for each of fiscal years 2018 through 2019* for grants under this subsection.

(j)(1) The **[Secretary]** *Secretary of Commerce* shall establish a Fishing Safety Research Grant Program to provide funding to individuals in academia, members of non-profit organizations and businesses involved in fishing and maritime matters, and other persons with expertise in fishing safety, to conduct research on methods of improving the safety of the commercial fishing industry, including vessel design, emergency and survival equipment, enhancement of vessel monitoring systems, communications devices, de-icing technology, and severe weather detection.

(2) The **[Secretary]** *Secretary of Commerce* shall award grants under this subsection on a competitive basis.

(3) The Federal share of the cost of any activity carried out with a grant under this subsection shall not exceed **[75]** 50 percent.

(4) There is authorized to be appropriated **[\$3,000,000 for each fiscal years 2015 through 2017]** *\$3,000,000 for each of fiscal years 2018 through 2019* for activities under this subsection.

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SUBTITLE III—MARITIME LIABILITY

* * * * *

CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I—GENERAL

Sec.

31301. Definitions.

* * * * *

31310. *Treatment of fishing permits.*

SUBCHAPTER I—GENERAL

* * * * *

§ 31310. Treatment of fishing permits

(a) *LIMITATION ON MARITIME LIENS.—This chapter—*

(1) *does not establish a maritime lien on a fishing permit; and*

(2) *does not authorize any civil action to enforce a maritime lien on a fishing permit.*

(b) *TREATMENT OF FISHING PERMITS UNDER STATE AND FEDERAL LAW.—A fishing permit—*

(1) *is governed solely by the State or Federal law under which it is issued; and*

(2) shall not be treated as part of a vessel, or as an appurtenance or intangible of a vessel, for any purpose under Federal law.

(c) *AUTHORITY OF SECRETARY OF COMMERCE NOT AFFECTED.*—Nothing in this section shall be construed as imposing any limitation upon the authority of the Secretary of Commerce—

(1) to modify, suspend, revoke, or impose a sanction on any fishing permit issued by the Secretary of Commerce; or

(2) to bring a civil action to enforce such a modification, suspension, revocation, or sanction.

(d) *FISHING PERMIT DEFINED.*—In this section the term “fishing permit” means any authorization of a person or vessel to engage in fishing that is issued under State or Federal law.

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SUBTITLE IV—REGULATION OF OCEAN SHIPPING

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PART A—OCEAN SHIPPING

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CHAPTER 401—GENERAL

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§ 40102. Definitions

In this part:

- (1) **AGREEMENT.**—The term “agreement”—
 - (A) means a written or oral understanding, arrangement, or association, and any modification or cancellation thereof; but
 - (B) does not include a maritime labor agreement.
- (2) **ANTITRUST LAWS.**—The term “antitrust laws” means—
 - (A) the Sherman Act (15 U.S.C. 1 et seq.);
 - (B) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8, 9);
 - (C) the Clayton Act (15 U.S.C. 12 et seq.);
 - (D) the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a);
 - (E) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
 - (F) the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.); and
 - (G) Acts supplementary to those Acts.
- (3) **ASSESSMENT AGREEMENT.**—The term “assessment agreement” means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent the agreement provides for the funding of collectively bargained fringe-benefit obligations on other than a uniform worker-hour basis, regardless of the cargo handled or type of vessel or equipment used.

(4) BULK CARGO.—The term “bulk cargo” means cargo that is loaded and carried in bulk without mark or count.

(5) CHEMICAL PARCEL-TANKER.—The term “chemical parcel-tanker” means a vessel that has—

(A) a cargo-carrying capability consisting of individual cargo tanks for bulk chemicals that—

- (i) are a permanent part of the vessel; and
- (ii) have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination; and

(B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(6) COMMON CARRIER.—The term “common carrier”—

(A) means a person that—

(i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;

(ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; but

(B) does not include a carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker, or by vessel when primarily engaged in the carriage of perishable agricultural commodities—

(i) if the carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) only with respect to the carriage of those commodities.

(7) CONFERENCE.—The term “conference”—

(A) means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to use a common tariff; but

(B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.

(8) CONTROLLED CARRIER.—The term “controlled carrier” means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if—

(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(9) DEFERRED REBATE.—The term “deferred rebate” means a return by a common carrier of any freight money to a shipper, where the return is—

(A) consideration for the shipper giving all or any portion of its shipments to that or any other common carrier over a fixed period of time;

(B) deferred beyond the completion of the service for which it was paid; and

(C) made only if the shipper has agreed to make a further shipment with that or any other common carrier.

(10) FOREST PRODUCTS.—The term “forest products” includes lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, and paper and paper board in rolls or in pallet or skid-sized sheets.

(11) INLAND DIVISION.—The term “inland division” means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(12) INLAND PORTION.—The term “inland portion” means the charge to the public by a common carrier for the non-ocean portion of through transportation.

(13) LOYALTY CONTRACT.—The term “loyalty contract” means a contract with an ocean common carrier or agreement providing for—

(A) a shipper to obtain lower rates by committing all or a fixed portion of its cargo to that carrier or agreement; and

(B) a deferred rebate arrangement.

(14) MARINE TERMINAL OPERATOR.—The term “marine terminal operator” means a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49.

(15) MARITIME LABOR AGREEMENT.—The term “maritime labor agreement”—

(A) means—

(i) a collective bargaining agreement between an employer subject to this part, or a group of such employers, and a labor organization representing employees in the maritime or stevedoring industry;

(ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or

(iii) an agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group; but

(B) does not include an assessment agreement.

(16) NON-VESSEL-OPERATING COMMON CARRIER.—The term “non-vessel-operating common carrier” means a common carrier that—

(A) does not operate the vessels by which the ocean transportation is provided; and

(B) is a shipper in its relationship with an ocean common carrier.

(17) OCEAN COMMON CARRIER.—The term “ocean common carrier” means a vessel-operating common carrier.

(18) OCEAN FREIGHT FORWARDER.—The term “ocean freight forwarder” means a person that—

(A) 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

(B) processes the documentation or performs related activities incident to those shipments.

(19) OCEAN TRANSPORTATION INTERMEDIARY.—The term “ocean transportation intermediary” means an ocean freight forwarder or a non-vessel-operating common carrier.

(20) SERVICE CONTRACT.—The term “service contract” means a written contract, other than a bill of lading or receipt, between one or more shippers, on the one hand, and an individual ocean common carrier or an agreement between or among ocean common carriers, on the other, in which—

(A) the shipper or shippers commit to providing a certain volume or portion of cargo over a fixed time period; and

(B) 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.

(21) SHIPMENT.—The term “shipment” means all of the cargo carried under the terms of a single bill of lading.

(22) SHIPPER.—The term “shipper” means—

(A) a cargo owner;

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

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

(D) a shippers’ association; or

(E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(23) SHIPPERS’ ASSOCIATION.—The term “shippers’ association” means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts.

(24) THROUGH RATE.—The term “through rate” means the single amount charged by a common carrier in connection with through transportation.

(25) THROUGH TRANSPORTATION.—The term “through transportation” means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of

which is a common carrier, between a United States port or point and a foreign port or point.

(26) *PORT SERVICES.*—The term “port services” means intermediary services provided to an ocean carrier at a United States port to facilitate vessels operated by such a carrier to operate and load and unload cargo at such port, including towage, cargo handling, and bunkering.

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§ 40104. Reports filed with the Commission

(a) *IN GENERAL.*—The Federal Maritime Commission may require a common carrier, *marine terminal operator*, or *ocean transportation intermediary*, or an officer, receiver, trustee, lessee, agent, or employee of the carrier, *operator*, or *intermediary*, to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the carrier, *operator*, or *intermediary*. The report, account, record, rate, charge, or memorandum shall be made under oath if the Commission requires, and shall be filed in the form and within the time prescribed by the Commission.

(b) *CONFERENCE MINUTES.*—Conference minutes required to be filed with the Commission under this section may not be released to third parties or published by the Commission.

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CHAPTER 403—AGREEMENTS

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§ 40304. Commission action

(a) *NOTICE OF FILING.*—Within 7 days after an agreement is filed, the Federal Maritime Commission shall transmit a notice of the filing to the Federal Register for publication, and interested persons may submit relevant information and documents to the Commission.

(b) *PRELIMINARY REVIEW AND REJECTION.*—After preliminary review, the Commission shall reject an agreement that it finds does not meet the requirements of sections 40302 and 40303 of this title. The Commission shall notify in writing the person filing the agreement of the reason for rejection.

(c) *REVIEW AND EFFECTIVE DATE.*—Unless rejected under subsection (b), an agreement (other than an assessment agreement) is effective—

(1) on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever is later; or

(2) if additional information or documents are requested under subsection (d)—

(A) on the 45th day after the Commission receives all the additional information and documents; or

(B) if the request is not fully complied with, on the 45th day after the Commission receives the information and documents submitted and a statement of the reasons for noncompliance with the request.

(d) REQUEST FOR ADDITIONAL INFORMATION.—Before the expiration of the period specified in subsection (c)(1), the Commission may request from the person filing the agreement any additional information and documents the Commission considers necessary [to make the determinations required by this section].

(e) MODIFICATION OF REVIEW PERIOD.—

(1) SHORTENING.—On request of the party filing an agreement, the Commission may shorten a period specified in subsection (c), but not to a date that is less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(2) EXTENSION.—The period specified in subsection (c)(2) may be extended only by the United States District Court for the District of Columbia in a civil action brought by the Commission under section 41307(c) of this title.

(f) FIXED TERMS.—The Commission may not limit the effectiveness of an agreement to a fixed term.

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CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES

§ 40901. License requirement

(a) IN GENERAL.—A person in the United States may not *advertise, hold oneself out, or* act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) EXCEPTION.—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license.

§ 40902. Financial responsibility

(a) IN GENERAL.—A person may not *advertise, hold oneself out, or* act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety—

(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

(2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or other surety obtained under this section—

(1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title;

(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company;
or

(B) 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

(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) REGULATIONS ON COURT JUDGMENTS.—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.

(d) RESIDENT AGENT.—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.

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CHAPTER 411—PROHIBITIONS AND PENALTIES

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§ 41104. Common carriers

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—

(1) allow a person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or any other unjust or unfair device or means;

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

(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

(B) under a tariff or service contract that has been suspended or prohibited by the Federal Maritime Commission under chapter 407 or 423 of this title;

(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;
 (B) cargo classifications;

- (C) cargo space accommodations or other facilities, with due regard being given to the proper loading of the vessel and the available tonnage;
- (D) loading and landing of freight; or
- (E) adjustment and settlement of claims;
- (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;
- (6) use a vessel in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;
- (7) offer or pay any deferred rebates;
- (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) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have [a tariff as required by section 40501 of this title and] a bond, insurance, or other surety as required by section 40902 of this title; [or]
- (12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary[.]; or
- (13) *participate in a rate discussion agreement and a vessel sharing agreement, slot sharing agreement, space sharing agreement, or similar agreement for use of vessels by two or more ocean common carriers, unless the Commission has granted the parties an exemption pursuant to section 40103.*

§ 41105. Concerted action

A conference or group of two or more common carriers may not—

- (1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;
- (2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;
- (3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;
- (4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the

setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as—

(A) authorized by section 40303(d) of this title;

(B) required by the law of the United States or the importing or exporting country; or

(C) agreed to by a shipper in a service contract;

(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 person due to the person's status as a shippers' association or ocean transportation intermediary; **[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 person due to the person's status as a shippers' association or ocean transportation intermediary**[.]**;

(9) *negotiate with a provider of port services, other than a provider of towing vessel services, on any matter relating to rates or services provided within the United States by such provider, unless advance notice is provided to the Federal Maritime Commission of the intent and need for the negotiation, the negotiation and any resulting agreement are not in violation of the antitrust laws and are consistent with the purposes of this part, and, as determined by the Commission, the negotiation and any resulting agreement will not substantially lessen competition in the purchasing of port services provided at United States ports (this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of common carriers); or*

(10) *negotiate with a provider of towing vessel services on any matter relating to rates or services provided within the United States by towing vessels.*

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CHAPTER 413—ENFORCEMENT

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§ 41307. Injunctive relief sought by the Commission

(a) GENERAL VIOLATIONS.—In connection with an investigation under section 41301 or 41302 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or transacts business. After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days

after the Commission has issued an order disposing of the issues under investigation.

(b) REDUCTION IN COMPETITION.—

(1) ACTION BY COMMISSION.—If, at any time after the filing or effective date of an agreement under chapter 403 of this title, the Commission determines that the agreement is likely, by a reduction in competition, to **[produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost]** *produce an unreasonable reduction in transportation service, produce an unreasonable increase in transportation cost, or substantially lessen competition in the purchasing of port services*, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission’s sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

(2) REMEDIES BY COURT.—In an action under this subsection, the court may issue—

(A) a temporary restraining order or a preliminary injunction; and

(B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

(3) BURDEN OF PROOF AND THIRD PARTIES.—In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

(4) COMPETITION FACTORS.—*In making a determination under this subsection, the Commission may consider any relevant competition factors in affected markets, including, without limitation, the competitive effect of agreements other than the agreement under review.*

(c) FAILURE TO PROVIDE INFORMATION.—If a person filing an agreement, or an officer, director, partner, agent, or employee of the person, fails substantially to comply with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court—

(1) may order compliance;

(2) shall extend the period specified in section 40304(c)(2) of this title until there has been substantial compliance; and

(3) may grant other equitable relief that the court decides is appropriate.

(d) REPRESENTATION.—The Commission may represent itself in a proceeding under this section in—

(1) a district court of the United States, on notice to the Attorney General; and

(2) a court of appeals of the United States, with the approval of the Attorney General.

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SUBTITLE V—MERCHANT MARINE

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PART C—FINANCIAL ASSISTANCE PROGRAMS

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CHAPTER 541—MISCELLANEOUS

Sec

[54101. Assistance for small shipyards and maritime communities]

54101. Assistance for small shipyards.

54102. Centers of excellence for domestic maritime workforce training and education.

§ 54101. Assistance for small shipyards [and maritime communities]

(a) ESTABLISHMENT OF PROGRAM.—Subject to the availability of appropriations, the Administrator of the Maritime Administration shall execute agreements with shipyards to provide assistance—

(1) in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

(2) for maritime training programs to foster technical skills and operational productivity **[in communities whose economies are related to or dependent upon the maritime industry.] relating to shipbuilding, ship repair, and associated industries.**

(b) AWARDS.—In providing assistance under the program, the Administrator shall—

[(1) take into account—

[(A) the economic circumstances and conditions of maritime communities;

[(B) projects that would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and

[(C) projects that would be effective in fostering employee skills and enhancing productivity; and]

(1) consider projects that foster—

(A) efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and

(B) employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries; and

(2) make grants within 120 days after the date of enactment of the appropriations Act for the fiscal year concerned.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Assistance provided under this section may be used *to—*

[(A) to make capital and related improvements in small shipyards located in or near maritime communities;

[(B) to provide training for workers in communities whose economies are related to the maritime industry; and

[(C) for such other purposes as the Administrator determines to be consistent with and supplemental to such activities.]

(A) make capital and related improvements in small shipyards; and

(B) provide training for workers in shipbuilding, ship repair, and associated industries.

(2) ADMINISTRATIVE COSTS.—Not more than 2 percent of amounts made available to carry out the program may be used for the necessary costs of grant administration.

(d) PROHIBITED USES.—Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land [unless such use is specifically approved by the Administrator in support of subsection (c)(1)(C)].

(e) MATCHING REQUIREMENTS; ALLOCATION.—

(1) FEDERAL FUNDING.—[Except as provided in paragraph (2),] Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

[(2) EXCEPTION.—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in paragraph (1).]

[(3)] (2) ALLOCATION OF FUNDS.—The Administrator may not award more than 25 percent of the funds appropriated to carry out this section for any fiscal year to any small shipyard in one geographic location that has more than 600 employees.

(f) APPLICATIONS.—

(1) IN GENERAL.—To be eligible for assistance under this section, an applicant shall submit an application, in such form, and containing such information and assurances as the Administrator may require, within 60 days after the date of enactment of the appropriations Act for the fiscal year concerned.

(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application submitted under paragraph (1) shall include—

- (A) a comprehensive description of—
 - (i) the need for the project;
 - (ii) the methodology for implementing the project;
 and
 - (iii) any existing programs or arrangements that can be used to supplement or leverage assistance under the program.

(3) PROCEDURAL SAFEGUARDS.—The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

- (A) grant funds are used for the purposes for which they were made available;
- (B) grantees have properly accounted for all expenditures of grant funds; and
- (C) grant funds not used for such purposes and amounts not obligated or expended are returned.

(4) PROJECT APPROVAL REQUIRED.—The Administrator may not award a grant under this section unless the Administrator determines that—

- (A) sufficient funding is available to meet the matching requirements of subsection (e);

(B) the project will be completed without unreasonable delay; and

(C) the recipient has authority to carry out the proposed project.

(g) AUDITS AND EXAMINATIONS.—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

(h) SMALL SHIPYARD DEFINED.—In this section, the term “small shipyard” means a shipyard facility in one geographic location that does not have more than 1,200 employees.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years [2015 through 2017 to carry out this section—]

[(1) \$5,000,000 for training grants; and]

[(2) \$25,000,000 for capital and related improvements] 2018 and 2019 to carry out this section \$30,000,000.

§54102. Centers of excellence for domestic maritime workforce training and education

(a) DESIGNATION.—The Secretary of Transportation may designate as a center of excellence for domestic maritime workforce training and education a covered training entity located in a State that borders on the—

- (1) Gulf of Mexico;
- (2) Atlantic Ocean;
- (3) Long Island Sound;
- (4) Pacific Ocean;
- (5) Great Lakes; or
- (6) Mississippi River System.

(b) ASSISTANCE.—The Secretary may enter into a cooperative agreement (as that term is used in section 6305 of title 31) with a center of excellence designated under subsection (a) to support maritime workforce training and education at the center of excellence, including efforts of the center of excellence to—

- (1) admit additional students;
- (2) recruit and train faculty;
- (3) expand facilities;
- (4) create new maritime career pathways; or
- (5) award students credit for prior experience, including military service.

(c) COVERED TRAINING ENTITY DEFINED.—In this section, the term “covered training entity” means an entity that is—

- (1) a community or technical college; or
- (2) a maritime training center—
 - (A) operated by, or under the supervision of, a State; and
 - (B) with a maritime training program in operation on the date of enactment of this section.

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