AMENDMENT TO RULES COMMITTEE PRINT 118–10

OFFERED BY MR. JOHNSON OF SOUTH DAKOTA

At the end of the bill, add the following:

DIVISION E—OCEAN SHIPPING REFORM IMPLEMENTATION ACT OF 2023

SECTION 1. SHORT TITLE.

This division may be cited as the “Ocean Shipping Reform Implementation Act of 2023”.

TITLE I—FEDERAL MARITIME COMMISSION

SEC. 101. PURPOSES.

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

(1) in paragraph (1) by striking “with” and all that follows through “regulatory costs”; 

(2) in paragraph (2) by striking “in the ocean commerce of the United States” and inserting “for the common carriage of goods by water in the foreign commerce of the United States”; 

(3) in paragraph (3) by striking “and” at the end;
(4) in paragraph (4)—

(A) by striking “promote” and inserting “support”; and

(B) by striking “, and” and all that follows through the period and inserting “; and”; and

(5) by adding at the end the following:

“(5) promote reciprocal trade in the common carriage of goods by water in the foreign commerce of the United States.”.

SEC. 102. DEFINITIONS.

(a) In General.—Section 40102(9) of title 46, United States Code, is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively and by moving the margins of clauses (i) and (ii), as redesignated, accordingly;

(2) by striking “means an ocean common carrier” and inserting the following: “means—

“(A) an ocean common carrier”;

(3) in subparagraph (A)(ii), as so redesignated, by striking the period and inserting “; or”; and

(4) by adding at the end the following:

“(B) such a carrier that is owned or controlled by, a subsidiary of, or otherwise related legally or financially (other than a minority re-
relationship or investment) to a corporation based in a country—

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

“(ii) identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a priority foreign country under subsection (a)(2) of that section; or

“(iii) subject to monitoring by the United States Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).”.

(b) CONFORMING AMENDMENT.—Section 46106(b)(7) of title 46, United States Code, is amended by striking “ocean common carriers, particularly such carriers that are controlled carriers” and all that follows through the period at the end and inserting “controlled carriers;”.
SEC. 103. COMPLAINTS AGAINST SHIPPING EXCHANGES.

(a) In General.—Section 40504(c) of title 46, United States Code, is amended—

(1) in the subsection heading by striking “EXEMPTION” and inserting “EXEMPTION AND INVESTIGATION”;

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

(3) by striking “may exempt” and inserting the following: “may—

“(1) exempt”; and

(4) by adding at the end the following:

“(2) investigate complaints submitted under section 40505.”.

(b) Complaints Against Shipping Exchanges.—

Chapter 405 of title 46, United States Code, is amended by adding at the end the following:

“§ 40505. Complaints against shipping exchanges

“(a) In General.—A person may submit to the Federal Maritime Commission, and the Commission shall accept, information concerning alleged incidents of market manipulation or other anticompetitive practices by shipping exchanges registered under section 40504.

“(b) Investigation.—Upon receipt of a submission of information under subsection (a), the Commission shall promptly investigate the accuracy of such information.
“(c) REPORT TO CONGRESS.—The Commission shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the results of any investigation in which the Commission finds incidents of market manipulation or anti-competitive practices by shipping exchanges registered under section 40504.”.

(e) CLERICAL AMENDMENT.—The analysis for chapter 405 of title 46, United States Code, is amended by adding at the end the following:

“40505. Complaints against shipping exchanges.”.

SEC. 104. REPEAL.

(a) IN GENERAL.—Section 40706 of title 46, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The analysis for chapter 407 of title 46, United States Code, is amended by striking the item relating to section 40706.

SEC. 105. DATA COLLECTION.

Section 41110 of title 46, United States Code, is amended—

(1) by striking “The Federal Maritime Commission” and inserting “(a) QUARTERLY REPORT.—The Federal Maritime Commission”; and

(2) by adding at the end the following:
“(b) LIMITATION ON DUPLICATION.—Unless the

data described in paragraphs (1) and (2) is not available

timely manner or in a form that allows the Commis-

tion to meet the requirements of subsection (a), data re-
quired to be reported under subsection (a) may not dupli-
cate information—

“(1) submitted to the Corps of Engineers pur-
suant to section 11 of the Act entitled ‘An Act au-
uthorizing the construction, repair, and preservation

certain public works on rivers and harbors, and

for other purposes’, approved September 22, 1922

(33 U.S.C. 555), by an ocean common carrier acting

as a vessel operator;

“(2) submitted pursuant to section 481 of the

Tariff Act of 1930 (19 U.S.C. 1481) to U.S. Cus-

oms and Border Protection by merchandise import-

ers; or

“(3) submitted to the Department of Commerce

pursuant to section 301 of title 13.”.

SEC. 106. NATIONAL ADVISORY COMMITTEES.

(a) NATIONAL SHIPPER ADVISORY COMMITTEE.—

Section 42502 of title 46, United States Code, is amend-
ed—
(1) in subsection (a) by striking “Committee.”
and inserting “Committee (in this section referred to
as the ‘Shipper Committee’).”; (2) by striking subsection (b); (3) by redesignating subsection (c) as sub-
section (b); and (4) in subsection (b), as so redesignated, by
striking “Committee” each place it appears and in-
serting “Shipper Committee”.

(b) NATIONAL PORT ADVISORY COMMITTEE.—Chapter 425 of title 46, United States Code, is amended—
(1) by redesignating section 42503 as section
42506; and (2) by inserting after section 42502 the fol-
lowing:

“§ 42503. National Port Advisory Committee
“(a) ESTABLISHMENT.—There is established a Na-
tional Port Advisory Committee (in this section referred
to as the ‘Port Committee’).
“(b) MEMBERSHIP.—
“(1) IN GENERAL.—The Port Committee shall
consist of 13 members appointed by the Commission
in accordance with this section.
“(2) EXPERTISE.—Each member of the Port
Committee shall have particular expertise, knowl-
edge, and experience in matters relating to the function of the Port Committee.

“(3) REPRESENTATION.—Members of the Port Committee shall be appointed as follows:

“(A) 5 members shall represent marine terminal operators, as defined in section 40102.

“(B) 5 members shall represent port authorities.

“(C) 3 members shall represent longshore and maritime labor.

“§ 42504. National Ocean Carrier Advisory Committee

“(a) ESTABLISHMENT.—There is established a National Ocean Carrier Advisory Committee (in this section referred to as the Carrier Committee’).

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Carrier Committee shall consist of 9 members appointed by the Commission in accordance with this section.

“(2) EXPERTISE.—Each member of the Carrier Committee shall have particular expertise, knowledge, and experience in matters relating to the function of the Committee.

“(3) REPRESENTATION.—Members of the Carrier Committee shall represent ocean carriers serving such seaports and terminals, of which at least three
shall be ocean transportation intermediaries (as such term is defined in section 40102)’’.

“The covered Committees shall advise the Federal Maritime Commission on policies relating to the competitiveness, reliability, and efficiency of the international ocean freight delivery system.”.

(c) CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 42501 of title 46, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) COVERED COMMITTEE.—The term ‘covered Committee’ means—

“(A) the National Shipper Advisory Committee established under section 42502;

“(B) the National Port Advisory Committee established under section 42503; and

“(C) the National Ocean Carrier Advisory Committee established under section 52504.”.

(2) ADMINISTRATION.—Section 42506 of title 46, United States Code, as redesignated by subsection (b)(1), is amended—

(A) by striking “The Committee” each place it appears except in subsection (k) and inserting “Each covered Committee”;
(B) in subsection (a) by striking “the Committee” and inserting “each such Committee”; 

(C) in subsections (b), (c), (d), (e), (f), and (j) by striking “the Committee” each place it appears and inserting “a covered Committee”;

(D) in subsection (h)—

(i) in paragraph (1)—

(I) by striking “Chair of the Committee” and inserting “Chair of each covered Committee”; and

(II) by striking “function of the Committee” and inserting “function of the applicable Committee”; and

(ii) in paragraph (2) by striking “the Committee” and inserting “each covered Committee”; 

(E) in subsection (i)—

(i) in paragraph (1) by striking “the Committee if the function of the Committee” and inserting “any relevant covered Committee if the function of such Committee”;}
(ii) in paragraph (2) by striking “the Committee” and inserting “each such Committee”; and

(iii) in paragraph (3)—

(I) by striking “from the Committee” and inserting “from a covered Committee”; and

(II) in subparagraph (B) by striking “to the Committee” and inserting “to the submitting Committee”; and

(iv) in paragraph (4) by striking “from the Committee” and inserting “from a covered Committee”; and

(F) in subsection (k) by striking “The Committee” and inserting “Covered Committees”.

SEC. 107. ANNUAL REPORT AND PUBLIC DISCLOSURES.

(a) REPORT ON FOREIGN LAWS AND PRACTICES.—

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

(1) in paragraph (6)—

(A) by striking “and” at the end; and

(B) by striking “under this part” and inserting “under chapter 403”;
(2) in paragraph (7)—

(A) by inserting “anticompetitive, non-reciprocal trade, or” before “otherwise concerning practices”;

(B) by inserting “or marine terminal operators” after “controlled carriers”; and

(C) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(8) an analysis of any trade imbalance resulting from the business practices of ocean common carriers, including an analysis of the data collected under section 41110; and

“(9) the aggregated findings and results of the Vessel-Operating Common Carrier Audit Program established by the Commission on July 18, 2021, pursuant to the Commission rule interpreting section 41102(c).”.

(b) PUBLIC DISCLOSURE.—Section 46106(d)(2) of title 46, United States Code, is amended by inserting “or marine terminal operator” after “common carrier”.

SEC. 108. CONTAINERIZED FREIGHT INDEXES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Federal Maritime Commission shall promulgate an advance notice of proposed
rulemaking on price indexes for containerized ocean
freight for shippers (as such term is defined in section
40102 of title 46, United States Code) in the United
States published by a shipping exchange registered under
section 40504 of title 46, United States Code.

(b) FINAL RULE.— Not later than 3 years after the
date of enactment of this Act, the Commission shall pub-
lish a final rule with respect to the advance notice of pro-
posed rulemaking under subsection (a).

TITLE II—OTHER AGENCIES

SEC. 201. DATA STANDARD FOR MARITIME FREIGHT LOGIS-
TICS.

(a) IN GENERAL.—Not later than 180 days after the
date of enactment of this Act, the Federal Maritime Com-
mission shall promulgate an advance notice of proposed
rulemaking on a data standard for maritime freight logis-
tics and ocean transportation in the foreign commerce of
the United States.

(b) CONSULTATION.—During the public comment pe-
riod for the rulemaking under subsection (a), the Commis-
sion shall consult with—

(1) the National Shippers Advisory Board es-
lished under section 42502 of title 46, United
States Code; and
(2) the Secretaries of Transportation, Commerce, and Agriculture.

(c) CONTENTS.—The rulemaking under subsection (a) shall—

(1) develop a data standard for the voluntary sharing of appropriate supply chain data with—

(A) a common lexicon of standard terms and methods of measurements;

(B) a method to exchange data in real time amongst relevant stakeholders;

(C) appropriate data protections to ensure confidentiality of proprietary business information; and

(D) appropriate cybersecurity measures to protect data from unauthorized use;

(2) incorporate data from stakeholders to facilitate—

(A) the arrival, unloading, loading, and departure of vessels;

(B) cargo availability and pick up reservation;

(C) chassis availability; and

(D) other data elements the Commission consider prudent; and
(3) consider relevant data standards used or under development within the private sector and whether to adopt or otherwise incorporate such standards into the rule finalized under this subsection, with priority given to standards that—

(A) are developed in open, transparent, impartial, balanced, consensus-based processes;

(B) are performance-based, technology neutral, and vendor neutral;

(C) are interoperable, allowing for the exchange and use of data between devices and systems;

(D) are market relevant and globally applicable;

(E) are nonduplicative of, and coherent with, other relevant standards, guides, best practices, and frameworks; and

(F) allow information owners to control what information is shared, when information is shared, with whom, and for what purpose; and

(4) be consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113; 15 U.S.C. 272 note) including any standard for the voluntary sharing of appropriate supply chain data developed thereunder.
(d) THIRD-PARTY AGREEMENT.—The Commission may enter into an agreement with 1 or more appropriate independent entities based in the United States that operate as voluntary consensus standards setting organizations as defined for purposes of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) and Office of Management and Budget Revised Circular A–119, published in the Federal Register on January 27, 2016 (81 Fed. Reg. 4673), to develop the data standard for maritime freight logistics and ocean transportation in the foreign commerce of the United States for the rulemaking under subsection (a) and for procurement or other relevant programmatic activities, consistent with the requirements of this section.

(e) GRANT CRITERION.—If the rulemaking under subsection (a) is finalized, the Secretary of Transportation may require a covered port authority to adopt any data standard issued pursuant to this section for relevant operational use cases, as determined by the Secretary.

(f) DEFINITION OF COVERED PORT AUTHORITY.—In this section, the term “covered port authority” means a port authority that receives funding after the date on which a rule is finalized under this section under—
(1) the port infrastructure development program under section 54301(a) of title 46, United States Code; or

(2) the maritime transportation system emergency relief program under section 50308 of title 46, United States Code.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the Commission to develop a data standard that violates the confidentiality and disclosure policies established under subchapter III of chapter 35 of title 44, United States Code.

SEC. 202. INDEPENDENT STUDY AND REPORT ON SHANGHAI SHIPPING EXCHANGE.

(a) STUDY.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall enter into an agreement with an appropriate independent entity described in subsection (d) to conduct a study and assessment of the business practices of the Shanghai Shipping Exchange, including—

(1) any anticompetitive advantages benefitting the Shanghai Shipping Exchange; and

(2) the ability of the Ministry of Transport of the People’s Republic of China and the Shanghai Shipping Exchange to manipulate container freight markets.
(b) ELEMENTS.—The study and assessment required under subsection (a) shall address the following:


(2) The impact of such business practices or influence on American consumers and businesses.

(3) The ability of a shipping exchange registered under section 40504 of title 46, United States Code, and based in the United States to identify market manipulation as described in subsection (a)(2) or any otherwise concerning practices by the Shanghai Shipping Exchange and report such incidents to the Federal Maritime Commission and other Federal regulators.

(4) Any other matters the Secretary or the appropriate independent entity that enters into an agreement under this section determines to be appropriate for the purposes of the study.

(c) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Transportation enters into an agreement under this section, the appropriate independent entity shall submit to the Secretary, the Committee on Commerce, Science, and
Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report setting forth the results of the study conducted under subsection (a).

(2) Public availability.—The Secretary shall publish the report required under paragraph (1) on a publicly accessible website of the Department of Transportation.

(d) Appropriate independent entity described.—An appropriate independent entity described in this subsection is—

(1) a federally funded research and development center sponsored by a Federal agency;

(2) the Transportation Research Board of the National Academies;

(3) the Government Accountability Office; or

(4) an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

(e) Obtaining official data.—The appropriate independent entity that enters into an agreement under this section may secure directly from any department or agency of the Federal Government information necessary to enable such entity to carry out this section. Upon request of such entity, the head of such department or agen-
cy shall furnish such information to the appropriate independent entity, unless doing so would not be in the public interest.

SEC. 203. POLICY WITH RESPECT TO LOGINK.

(a) In General.—Chapter 503 of title 46, United States Code, is amended by adding at the end the following:

“§ 50309. Prohibited use

“(a) In General.—A covered entity shall not utilize covered logistics software.

“(b) Guidance.—The Secretary of Transportation shall publish on the website of the Department of Transportation, and update regularly, a list of prohibited logistics information technologies provided by the People’s Republic of China or Chinese state-affiliated entities.

“(c) Consultation.—The Secretary shall consult with the United States-China Economic and Security Review Commission established under section 1238 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) in carrying out this section.

“(d) Review.—In preparing the guidance under subsection (b), the Secretary shall review the list of Chinese state-affiliated entities included in—
“(1) the list of Communist Chinese military companies released by the Department of Defense in accordance with section 1260H of the National Defense Authorization Act for Fiscal Year 2021 (10 U.S.C. 113 note); and

“(2) the most recent ‘Non-SDN Chinese Military-Industrial Complex Companies List’ published by the Secretary of the Treasury pursuant to Executive Order 14032 of June 3, 2021 (86 Fed. Reg. 30145; relating to Addressing the Threat From Securities Investments That Finance Certain Companies of the People’s Republic of China).

“(e) DEFINITIONS.—In this section:

“(1) COVERED LOGISTICS SOFTWARE.—The term ‘covered logistics software’ means—

“(A) the public, open, shared logistics information network known as the ‘National Public Information Platform for Transportation & Logistics’ by the Ministry of Transport of China or any affiliate or successor entity;

“(B) any other transportation logistics software designed to be used by covered entities subject to the jurisdiction, ownership, direction, or control of a foreign adversary; or
“(C) any other logistics platform or software that shares data with a system described in paragraphs (a) or (b).

“(2) COVERED ENTITY.—The term ‘covered entity’ means an entity that receives funding after the date of enactment of this section under—

“(A) the port infrastructure development program under subsections (a) and (b) of section 54301; or

“(B) the maritime transportation system emergency relief program under section 50308.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 503 of title 46, United States Code, is amended by adding at the end the following:

"50309. Prohibited use.".

**TITLE III—TECHNICAL AMENDMENTS**

**SEC. 301. TECHNICAL AMENDMENTS.**

(a) ADMINISTRATION.—Section 15109 of title 46, United States Code, is amended—

(1) in subsection (a)(2) by striking "15102," and inserting "15102"; and

(2) in subsection (k)(1) by inserting "or to which this chapter applies" after "under this chapter".
Section 41302(a) of title 46, United States Code, is amended by striking “conduct agreement” and inserting “conduct, agreement”.

Section 41305(c) is amended by striking “section subsection” and inserting “subsection”.

Section 42502(b)(3) of title 46, United States Code, as redesignated by the preceding provisions of this Act, is amended by striking “(3) REPRESENTATION” and all that follows through “Twelve members” and inserting the following:

“(3) REPRESENTATION.—Members of the Committee shall be appointed as follows:

“(A) Twelve members”.

The analysis for chapter 411 of title 46, United States Code, is amended by striking the item relating to section 41107 and inserting the following:

“41107. Monetary penalties or refunds.”.

The analysis for subtitle IV of title 46, United States Code, is amended by striking the item relating to chapter 425 and inserting the following:

“425. National Advisory Committees ...................................................... 42501”.
(g) Analysis.—The heading and analysis for chapter 425 of title 46, United States Code, is amended to read as follows:

“CHAPTER 425—NATIONAL PORT ADVISORY COMMITTEE

“Sec.
“42501. Definitions.
“42505. Function.
“42506. Administration.”.

(h) Annual Report and Public Disclosure.—

(1) Conforming Amendment.—The heading for section 46106 of title 46, United States Code, is amended by inserting “and public disclosure” after “report”.

(2) Clerical Amendment.—The analysis for chapter 461 of title 46, United States Code, is amended by striking the item relating to section 46106 and inserting the following:

“46106. Annual report and public disclosure.”.