

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.**

**S. 2278**

To establish Image Adjudicator and Supervisory Image Adjudicator positions in the U.S. Customs and Border Protection Office of Field Operations.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. LANKFORD

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Enforcement,  
5 Security, and Trade (BEST) Facilitation Act of 2023”.

6 **SEC. 2. OFFICE OF FIELD OPERATIONS IMAGE TECHNICIAN**  
7 **PILOT PROGRAM.**

8 (a) IN GENERAL.—Section 411(g) of the Homeland  
9 Security Act of 2002 (6 U.S.C. 211(g)) is amended by  
10 adding at the end the following:

11 “(6) IMAGE TECHNICIAN PILOT PROGRAM.—

1 “(A) IMAGE TECHNICIAN 1.—

2 “(i) IN GENERAL.—There shall be in  
3 the Office of Field Operations, Image  
4 Technician 1 positions, which shall be  
5 filled in accordance with the provisions  
6 under chapter 33 (relating to appointments  
7 in the competitive service) and chapters 51  
8 and 53 (relating to classification and rates  
9 of pay) of title 5, United States Code.

10 “(ii) CONDITIONS.—Image Technician  
11 1 positions—

12 “(I) may be filled by existing  
13 U.S. Customs and Border Protection  
14 employees;

15 “(II) are not law enforcement of-  
16 ficer positions; and

17 “(III) may not be filled by inde-  
18 pendent contractors.

19 “(iii) DUTIES.—The duties of an  
20 Image Technician 1 shall include—

21 “(I) reviewing non-intrusive in-  
22 spection images of conveyances and  
23 containers entering or exiting the  
24 United States through a land, sea, or

1 air port of entry or international rail  
2 crossing;

3 “(II) assessing whether images of  
4 conveyances and containers appear to  
5 contain anomalies indicating the po-  
6 tential presence of contraband, per-  
7 sons unlawfully seeking to enter or  
8 exit the United States, or illicitly con-  
9 cealed merchandise, including illicit  
10 drugs and terrorist weapons;

11 “(III) recommending entry re-  
12 lease or exit release for any convey-  
13 ances and containers whenever the im-  
14 ages of such items do not include no-  
15 ticeable anomalies indicating the po-  
16 tential presence of contraband, per-  
17 sons seeking to unlawfully enter or  
18 exit the United States, or illicitly con-  
19 cealed merchandise, including illicit  
20 drugs or terrorist weapons, to the  
21 U.S. Customs and Border Protection  
22 Officer responsible for inspecting such  
23 conveyance or container; and

24 “(IV) recommending further in-  
25 spection of any conveyances and con-

1                   tainers whenever the Image Techni-  
2                   cian reasonably believes that an image  
3                   of any such item contains anomalies  
4                   indicating the potential presence of  
5                   contraband, persons seeking to unlaw-  
6                   fully enter or exit the United States,  
7                   or illicitly concealed merchandise,  
8                   such as illicit drugs or terrorist weap-  
9                   ons, to the U.S. Customs and Border  
10                  Protection officer who is responsible  
11                  for inspecting such conveyance or con-  
12                  tainer.

13                  “(B) IMAGE TECHNICIAN 2.—

14                         “(i) IN GENERAL.—There shall be in  
15                         the Office of Field Operations, Image  
16                         Technician 2 positions, which shall be  
17                         filled in accordance with the provisions  
18                         under chapter 33 (relating to appointments  
19                         in the competitive service) and chapters 51  
20                         and 53 (relating to classification and rates  
21                         of pay) of title 5, United States Code.

22                         “(ii) CONDITIONS.—Image Technician  
23                         2 positions—

1                   “(I) may be filled by existing  
2 U.S. Customs and Border Protection  
3 employees;

4                   “(II) are not law enforcement of-  
5 ficer positions; and

6                   “(III) may not be filled by inde-  
7 pendent contractors.

8                   “(iii) DUTIES.—The duties of an  
9 Image Technician 2 shall include—

10                   “(I) carrying out all of the duties  
11 described in subclauses (I) through  
12 (IV) of subparagraph (A)(ii);

13                   “(II) receiving intelligence from  
14 the National Targeting Center regard-  
15 ing tactics, techniques, and proce-  
16 dures being used at ports of entry and  
17 in the border environment by malign  
18 actors to facilitate the unlawful entry  
19 or exit of contraband, persons, or illic-  
20 itly concealed merchandise, such as il-  
21 licit drugs or terrorist weapons; and

22                   “(III) reporting new information  
23 to the National Targeting Center re-  
24 garding tactics, techniques, and proce-  
25 dures being used at ports of entry and

1 in the border environment by malign  
2 actors to facilitate the unlawful entry  
3 or exit of contraband, persons, or con-  
4 cealed merchandise, such as illicit  
5 drugs or terrorist weapons.

6 “(C) SUPERVISORY U.S. CUSTOMS AND  
7 BORDER PROTECTION OFFICERS.—

8 “(i) SUPERVISION.—All image techni-  
9 cians shall be supervised by a Supervisory  
10 U.S. Customs and Border Protection Offi-  
11 cer.

12 “(ii) DISCRETION AND DECISION-MAK-  
13 ING AUTHORITY.—The appropriate Super-  
14 visory U.S. Customs and Border Protec-  
15 tion Officer, while working with image  
16 technicians, shall retain the discretion and  
17 final decision-making authority—

18 “(I) to release conveyances or  
19 cargo for entry; or

20 “(II) to refer such conveyance or  
21 cargo for further inspection.

22 “(iii) TRAINING.—A Supervisory U.S.  
23 Customs and Border Protection Officer  
24 who supervises image technicians shall re-

1           ceive additional training in accordance with  
2           subparagraph (D).

3           “(D) TRAINING REQUIREMENTS.—All  
4           image technicians shall receive annual training  
5           and additional ad hoc training, to the extent  
6           necessary based on current trends, regarding—

7                   “(i) respecting privacy, civil rights,  
8                   and civil liberties, including the protections  
9                   against unreasonable searches and seizures  
10                  afforded by the First and Fourth Amend-  
11                  ments to the Constitution of the United  
12                  States;

13                   “(ii) analyzing images generated by  
14                   non-intrusive inspection technologies or  
15                   any successor technologies deployed by  
16                   U.S. Customs and Border Protection;

17                   “(iii) identifying commodities and  
18                   merchandise in images generated by non-  
19                   intrusive inspection technologies or any  
20                   successor technologies deployed by U.S.  
21                   Customs and Border Protection;

22                   “(iv) identifying contraband, persons  
23                   who are seeking to unlawfully enter or exit  
24                   the United States, or illicitly concealed  
25                   merchandise, such as illicit drugs or ter-

1 rorist weapons, in images generated by  
2 non-intrusive technologies or any successor  
3 technologies deployed by U.S. Customs and  
4 Border Protection;

5 “(v) tactics, techniques, and proce-  
6 dures being used at ports of entry and in  
7 the border environment by malign actors to  
8 facilitate the unlawful entry or exit of con-  
9 traband, persons, or illicitly concealed mer-  
10 chandise, such as illicit drugs or terrorist  
11 weapons; and

12 “(vi) any other training that the Com-  
13 missioner of U.S. Customs and Border  
14 Protection determines to be relevant to the  
15 duties described in subparagraphs (A)(iii)  
16 or (B)(iii).

17 “(E) ANNUAL ASSESSMENT.—All image  
18 technicians shall receive annual testing with re-  
19 spect to their—

20 “(i) accuracy in image analysis;

21 “(ii) timeliness in image analysis; and

22 “(iii) ability to ascertain tactics, tech-  
23 niques, and procedures being used at ports  
24 of entry and in the border environment by  
25 malign actors to facilitate the unlawful



1 entry or exit of contraband, persons, or il-  
2 licitly concealed merchandise, such as illicit  
3 drugs or terrorist weapons.

4 “(F) COMMAND CENTERS.—As part of the  
5 pilot program established under this paragraph,  
6 the Executive Assistant Commissioner of the  
7 Office of Field Operations shall establish 12 re-  
8 gional command centers at land, rail, air, and  
9 sea ports in which image technicians shall re-  
10 view non-intrusive inspection images.

11 “(G) RULE OF CONSTRUCTION.—Nothing  
12 in this paragraph may be construed to affect  
13 the discretion and final decision-making author-  
14 ity given to U.S. Customs and Border Protec-  
15 tion Officers to release conveyances or cargo for  
16 entry or exit or to refer such conveyances or  
17 cargo for further inspection.”.

18 (b) EFFECTIVE DATE.—

19 (1) SUNSET.—The amendment made by sub-  
20 section (a) shall cease to have effect on the date that  
21 is 5 years after the date of the enactment of this  
22 Act.

23 (2) TRANSFERS AUTHORIZED.—Upon the ter-  
24 mination of the pilot program established by section  
25 411(g)(6) of the Homeland Security Act of 2002, as

1 added by subsection (a), individuals occupying  
2 Image Technician 1 or Image Technician 2 positions  
3 in the Office of Field Operations may transfer to  
4 comparable positions within U.S. Customs and Bor-  
5 der Protection or the Department of Homeland Se-  
6 curity.

7 **SEC. 3. REPORTING REQUIREMENTS.**

8 (a) SEMIANNUAL REPORTS.—Not later than 180  
9 days after the hiring of the first positions described in sec-  
10 tion 411(g)(6) of the Homeland Security Act of 2002, as  
11 added by section 2, and every 180 days thereafter, the  
12 Commissioner of U.S. Customs and Border Protection, in  
13 consultation with the Executive Assistant Commissioner  
14 of the Office of Field Operations, shall submit a report  
15 to the Committee on Homeland Security and Govern-  
16 mental Affairs of the Senate and the Committee on Home-  
17 land Security of the House of Representatives that identi-  
18 fies—

19 (1) the number of Image Technician 1 and  
20 Image Technician 2 positions filled during the re-  
21 porting period;

22 (2) the number of Image Technician 1 and  
23 Image Technician 2 positions currently employed by  
24 the Office of Field Operations, disaggregated by—

25 (A) port of entry or field office;

1 (B) image technician position; and

2 (C) command center, as applicable;

3 (3) the daily average number of images scanned  
4 by each Image Technician 1 and each Image Techni-  
5 cian 2;

6 (4) training methodologies utilized to train  
7 image technicians;

8 (5) assessment passage rates of image techni-  
9 cians;

10 (6) the impact of image technicians on interdic-  
11 tion rates at ports of entry and international rail  
12 crossings at which image technicians are stationed  
13 or from which image technicians review images, in-  
14 cluding—

15 (A) throughput increases or decreases at  
16 such ports of entry and international rail cross-  
17 ings;

18 (B) increases or decreases in waiting times  
19 at such ports of entry and international rail  
20 crossings;

21 (C) average wait times at such ports of  
22 entry and international rail crossings; and

23 (D) increases or decreases of seizures of  
24 contraband, persons seeking to unlawfully enter  
25 or exit the United States, or illicitly concealed

1 merchandise, such as illicit drugs or terrorist  
2 weapons, broken down by type of seizure and  
3 port of entry or international rail crossing;

4 (7) the impact of image technicians on U.S.  
5 Customs and Border Protection's capability to re-  
6 view non-intrusive inspection images of conveyances  
7 and containers entering or exiting the United States  
8 through a land, sea, or air port of entry or inter-  
9 national rail crossing;

10 (8) an assessment of the effectiveness with  
11 which image technicians carry out the duties de-  
12 scribed in subparagraphs (A)(iii) and (B)(iii) of sec-  
13 tion 411(g)(6) of the Homeland Security Act of  
14 2002, as added by section 2(a), compared to any  
15 U.S. Customs and Border Protection officers who  
16 are assigned such duties.

17 (9) the progress made in establishing command  
18 centers under the pilot program established by such  
19 section;

20 (10) any infrastructure or resource needs re-  
21 quired to establish such command centers; and

22 (11) the ports of entry and international rail  
23 crossing, as applicable, that are supported by such  
24 a command center.

1           (b) BIENNIAL BRIEFINGS.—The Executive Assistant  
2 Commissioner of the Office of Field Operations shall pro-  
3 vide biannual briefings to the Committee on Homeland Se-  
4 curity and Governmental Affairs of the Senate and the  
5 Committee on Homeland Security of the House of Rep-  
6 resentatives regarding the information described in the  
7 latest report submitted pursuant to subsection (a).