

117TH CONGRESS
1ST SESSION

S. 3262

To improve the efficient movement of freight at ports in the United States,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2021

Mr. WICKER (for himself, Mrs. CAPITO, Mr. MORAN, Mr. YOUNG, and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the efficient movement of freight at ports in
the United States, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Facilitating Relief for
5 Efficient Intermodal Gateways to Handle Transportation
6 Act” or the “FREIGHT Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) COMMISSION.—The term “Commission”
10 means the Federal Maritime Commission.

1 (2) SECRETARY.—The term “Secretary” means
2 the Secretary of Transportation.

3 **SEC. 3. GRANT PROGRAM TO IMPROVE MOVEMENT OF**
4 **FREIGHT.**

5 (a) DEFINITIONS.—In this section:

6 (1) ELIGIBLE ENTITY.—The term “eligible enti-
7 ty” means—

8 (A) a port authority;

9 (B) a State entity; and

10 (C) a local entity.

11 (2) PROGRAM.—The term “program” means
12 the discretionary grant program established under
13 subsection (b).

14 (b) ESTABLISHMENT.—Not later than 180 days after
15 the date of enactment of this Act, the Secretary shall es-
16 tablish, within the Office of the Secretary, a discretionary
17 grant program relating to improving the efficient move-
18 ment of freight at ports.

19 (c) GOALS.—The goals of the program shall be to
20 fund, through the provision of 1 or more grants, planning
21 projects that—

22 (1) identify what would be needed for eligible
23 entities—

1 (A) to standardize the definitions of terms
2 used in port operations and related documenta-
3 tion, including—

- 4 (i) terms used in bills of lading;
5 (ii) the terms used to identify various
6 port call processes; and
7 (iii) terms used to notify relevant
8 stakeholders that the freight of those
9 stakeholders is available; or

10 (B) to develop the technology needed to
11 improve communication of eligible entities with
12 respect to freight location, availability, and
13 equipment among—

- 14 (i) port authorities;
15 (ii) marine terminal operators;
16 (iii) shippers;
17 (iv) rail carriers;
18 (v) motor carriers and drayage pro-
19 viders; and
20 (vi) other relevant stakeholders; and

21 (2) result in a planning document described in
22 subsection (e).

23 (d) APPLICATION.—To be eligible to receive a grant
24 under the program, an eligible entity shall submit to the
25 Secretary an application, at such time, in such manner,

1 and containing such information as the Secretary may re-
2 quire, including a description of the means by which the
3 eligible entity will incorporate the views and input of other
4 port stakeholders in identifying what would be needed to
5 standardize the definitions described in subsection
6 (c)(1)(A) and develop the technology described in sub-
7 section (c)(1)(B).

8 (e) PLANNING DOCUMENT.—Each eligible entity that
9 receives a grant under the program shall develop and sub-
10 mit to the Secretary, at such time as the Secretary deter-
11 mines to be appropriate, a planning document that—

12 (1) identifies what would be necessary to stand-
13 ardize the applicable definitions;

14 (2) identifies what would be necessary to de-
15 velop the applicable technology;

16 (3) includes input from relevant stakeholders,
17 such as marine terminal operators, port authorities,
18 State and local governments, ocean carriers, barge
19 operators, motor carriers, rail carriers, drayage pro-
20 viders, chassis providers, and freight forwarders and
21 brokers; and

22 (4) addresses concerns regarding data privacy.

23 (f) PROJECT REQUIREMENTS.—

24 (1) FEDERAL SHARE.—The Federal share of
25 the total costs of a project for which a grant is pro-

1 vided under the program shall be not more than 50
2 percent.

3 (2) MAXIMUM GRANT AMOUNT.—The maximum
4 amount of a grant provided under the program shall
5 be \$1,000,000.

6 (3) ELIGIBLE EXPENSES.—A grant provided
7 under the program may be used for eligible project
8 expenses, including—

9 (A) communications hardware and soft-
10 ware;

11 (B) data management hardware and soft-
12 ware; and

13 (C) planning and engineering costs.

14 (g) GRANT INFORMATION.—At the request of an eli-
15 gible entity that receives a grant under the program, the
16 Secretary shall provide to the eligible entity information
17 relating to other grant programs offered through the De-
18 partment of Transportation under which the planning
19 projects of the eligible entity under the program may be
20 considered to be an eligible activity.

21 (h) LESSONS LEARNED.—The Secretary shall—

22 (1) analyze the information contained in each
23 planning document submitted under subsection (e);
24 and

1 (iv) by rail or truck from a port to the
2 destination;

3 (B) whether and how the key terms used
4 in that documentation or the data and informa-
5 tion exchanged, or to describe various actions to
6 move freight, vary depending on—

7 (i) the type of freight being moved;

8 (ii) the mode by which the freight
9 moves;

10 (iii) whether the freight is required to
11 be moved by multiple modes;

12 (iv) the State or region in the United
13 States from, through, or to which the
14 freight moves;

15 (v) the port or marine terminal oper-
16 ator;

17 (vi) the origination or destination of
18 the freight; and

19 (vii) other relevant criteria; and

20 (C) recommendations with respect to
21 means to rationalize existing terms, documenta-
22 tion, and data and information exchanged to
23 enable port stakeholders to better track and
24 manage freight transfer and delivery; and

25 (2) to assess and determine—

1 (A) the data held and shared across exist-
 2 ing, separate data systems used in international
 3 transportation across different modes of trans-
 4 portation, with respect to methods to link those
 5 data across the existing, separate data systems;

6 (B) the best methods to link and enable ef-
 7 fective exchange of those data across existing
 8 systems, both domestically and internationally;

9 (C) methods to standardize data obtained
 10 from long-standing separate data systems; and

11 (D) gaps in existing data and technology
 12 standards that would be necessary to address
 13 the development of systems to allow port stake-
 14 holders to better track and predict—

15 (i) the location of freight at ports;

16 (ii) the availability of freight for pick-
 17 up; and

18 (iii) the ability to receive and return
 19 equipment at ports.

20 **SEC. 5. DWELL TIME STATISTICS.**

21 (a) **DEFINITIONS.**—In this section:

22 (1) **DIRECTOR.**—The term “Director” means
 23 the Director of the Bureau of Transportation Statis-
 24 tics.

1 (2) DWELL TIME.—The term “dwell time”,
2 with respect to a piece of equipment, means the
3 quantity of time during which the piece of equip-
4 ment is—

5 (A) subject to maintenance; or

6 (B) in use.

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

10 (A) not less than 20 feet; and

11 (B) not greater than 45 feet.

12 (b) AUTHORITY TO COLLECT DATA.—

13 (1) IN GENERAL.—Each port, marine terminal
14 operator, and chassis provider shall submit to the
15 Director such data as the Director determines to be
16 necessary for the implementation of this section,
17 subject to subchapter III of chapter 35 of title 44,
18 United States Code.

19 (2) APPROVAL BY OMB.—The Director of the
20 Office of Management and Budget shall approve an
21 information collection for purposes of this section by
22 not later than 60 days after the date of enactment
23 of this Act.

24 (c) PUBLICATION.—Not later than 240 days after the
25 date of enactment of this Act, and not less frequently than

1 monthly thereafter, the Director shall publish statistics re-
2 lating to the dwell time of equipment used in intermodal
3 transportation, including—

4 (1) total dwell time, from all causes, of marine
5 containers and marine container chassis; and

6 (2) at a minimum, maintenance dwell time and
7 in-use dwell time of marine containers and marine
8 container chassis.

9 (d) FACTORS.—To the maximum extent practicable,
10 the Director shall publish the statistics described in sub-
11 section (c)—

12 (1) on a local, regional, and national basis; and

13 (2) at major coastal and inland port facilities.

14 **SEC. 6. FEDERAL MARITIME COMMISSION ACTIVITIES.**

15 (a) PUBLIC SUBMISSIONS TO COMMISSION.—The
16 Chairperson of the Commission shall—

17 (1) establish on the public website of the Com-
18 mission a webpage that allows for the submission of
19 comments, complaints, concerns, reports of non-
20 compliance, requests for investigation, and requests
21 for alternative dispute resolution; and

22 (2) direct each submission under the link estab-
23 lished under paragraph (1) to the appropriate com-
24 ponent office of the Commission.

1 (b) AUTHORIZATION OF OFFICE OF CONSUMER AF-
2 FAIRS AND DISPUTE RESOLUTION SERVICES.—The Com-
3 mission shall maintain an Office of Consumer Affairs and
4 Dispute Resolution Services to provide nonadjudicative
5 ombuds assistance, mediation, facilitation, and arbitration
6 to resolve challenges and disputes involving cargo ship-
7 ments, household good shipments, and cruises subject to
8 the jurisdiction of the Commission.

9 (c) ENHANCING CAPACITY FOR INVESTIGATIONS.—

10 (1) IN GENERAL.—Pursuant to section 41302
11 of title 46, United States Code, not later than 18
12 months after the date of enactment of this Act, the
13 Chairperson of the Commission shall staff within the
14 Bureau of Enforcement, the Bureau of Certification
15 and Licensing, the Office of the Managing Director,
16 the Office of Consumer Affairs and Dispute Resolu-
17 tion Services, and the Bureau of Trade Analysis not
18 fewer than 7 total positions to assist in investiga-
19 tions and oversight, in addition to the positions with-
20 in the Bureau of Enforcement, the Bureau of Cer-
21 tification and Licensing, the Office of the Managing
22 Director, the Office of Consumer Affairs and Dis-
23 pute Resolution Services, and the Bureau of Trade
24 Analysis on that date of enactment.

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

3 (A) to Area Representatives of the Bureau
4 of Enforcement;

5 (B) to attorneys of the Bureau of Enforce-
6 ment in enforcing the laws and regulations sub-
7 ject to the jurisdiction of the Commission;

8 (C) for the alternative dispute resolution
9 services of the Commission; or

10 (D) for the review of agreements and ac-
11 tivities subject to the authority of the Commis-
12 sion.

13 **SEC. 7. BEST PRACTICES FOR CHASSIS POOLS.**

14 (a) IN GENERAL.—Not later than April 1, 2023, the
15 Commission shall enter into an agreement with the Trans-
16 portation Research Board of the National Academies of
17 Sciences, Engineering, and Medicine under which the
18 Transportation Research Board shall carry out a study
19 and develop best practices for on-terminal or near-ter-
20 minal chassis pools that provide service to marine terminal
21 operators, motor carriers, railroads, and other stake-
22 holders that use the chassis pools, with the goal of opti-
23 mizing supply chain efficiency and effectiveness.

1 (b) REQUIREMENTS.—In developing best practices
2 under subsection (a), the Transportation Research Board
3 shall—

4 (1) take into consideration—

5 (A) practical obstacles to the implementa-
6 tion of chassis pools; and

7 (B) potential solutions to those obstacles;
8 and

9 (2) address relevant communication practices,
10 information sharing, and knowledge management.

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

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
15 authorized to be appropriated to the Commission to carry
16 out this section \$500,000.

17 **SEC. 8. ENHANCING ANTI-RETALIATION PROTECTIONS.**

18 (a) GENERAL PROHIBITIONS.—Section 41102 of title
19 46, United States Code, is amended by adding at the end
20 the following:

21 “(d) RETALIATION AND OTHER DISCRIMINATORY
22 ACTIONS.—A common carrier, marine terminal operator,
23 or ocean transportation intermediary, acting alone or in
24 conjunction with any other person, directly or indirectly,
25 may not—

1 “(1) retaliate against a shipper, an agent of a
2 shipper, an ocean transportation intermediary, or a
3 motor carrier by refusing, or threatening to refuse,
4 an otherwise-available cargo space accommodation;
5 or

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

8 “(A) the reason that a shipper, an agent of
9 a shipper, an ocean transportation inter-
10 mediary, or motor carrier has—

11 “(i) patronized another carrier; or

12 “(ii) filed a complaint against the
13 common carrier, marine terminal operator,
14 or ocean transportation intermediary; or

15 “(B) any other reason.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 41104 of title 46, United States
18 Code, is amended—

19 (A) in subsection (a)—

20 (i) by striking paragraph (3); and

21 (ii) by redesignating paragraphs (4)
22 through (13) as paragraphs (3) through
23 (12), respectively;

1 (B) in subsection (b), by striking “sub-
2 section (a)(13)” and inserting “subsection
3 (a)(12)”; and

4 (C) in subsection (c), by striking “sub-
5 section (a)(13)” and inserting “subsection
6 (a)(12)”.

7 (2) Section 41108(a) of title 46, United States
8 Code, is amended by striking “section 41104(1), (2),
9 or (7) of this title” and inserting “paragraph (1),
10 (2), or (6) of section 41104(a)”.

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

16 (4) Section 41305 of title 46, United States
17 Code, is amended—

18 (A) in subsection (c), by striking
19 “41104(3) or (6), or 41105(1) or (3) of this
20 title” and inserting “section 41104(a)(5), or
21 paragraph (1) or (3) of section 41105”; and

22 (B) in subsection (d), by striking “section
23 41104(4)(A) or (B) of this title” and inserting
24 “subparagraph (A) or (B) of section
25 41104(a)(3)”.

1 (c) ENHANCING REPARATIONS FOR VIOLATIONS.—
 2 Section 41305(e) of title 46, United States Code (as
 3 amended by subsection (b)(4)(A)), is amended by striking
 4 “41102(b)” and inserting “subsection (b) or (c) of section
 5 41102”.

6 **SEC. 9. RELIEF AVAILABLE IN ENFORCEMENT PRO-**
 7 **CEEDINGS.**

8 (a) ASSESSMENT OF PENALTIES.—Section 41109 of
 9 title 46, United States Code, is amended—

10 (1) by striking subsections (a) and (b) and in-
 11 serting the following:

12 “(a) GENERAL AUTHORITY.—Until a matter is re-
 13 ferred to the Attorney General, the Federal Maritime
 14 Commission may—

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

17 “(A) assess a civil penalty; or

18 “(B) in addition to, or in lieu of, assessing
 19 a civil penalty under subparagraph (A), order a
 20 refund of money (including additional amounts
 21 in accordance with section 41305(c)), subject to
 22 subsection (b)(2); and

23 “(2) compromise, modify, or remit, with or
 24 without conditions, a civil penalty or refund imposed
 25 under paragraph (1).

1 “(b) DETERMINATION OF AMOUNT.—

2 “(1) FACTORS FOR CONSIDERATION.—In deter-
3 mining the amount of a civil penalty assessed or re-
4 fund of money ordered pursuant to subsection (a),
5 the Federal Maritime Commission shall take into
6 consideration—

7 “(A) the nature, circumstances, extent,
8 and gravity of the violation committed;

9 “(B) with respect to the violator—

10 “(i) the degree of culpability;

11 “(ii) any history of prior offenses;

12 “(iii) the ability to pay; and

13 “(iv) such other matters as justice
14 may require; and

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

17 “(2) COMMENSURATE REDUCTION IN CIVIL
18 PENALTY.—

19 “(A) IN GENERAL.—In any case in which
20 the Federal Maritime Commission orders a re-
21 fund of money pursuant to subsection (a)(1)(B)
22 in addition to assessing a civil penalty pursuant
23 to subsection (a)(1)(A), the amount of the civil
24 penalty assessed shall be decreased by any addi-
25 tional amounts included in the refund of money

1 in excess of the actual injury (as defined in sec-
2 tion 41305(a)).

3 “(B) TREATMENT OF REFUNDS.—A re-
4 fund of money ordered pursuant to subsection
5 (a)(1)(B) shall be—

6 “(i) considered to be compensation
7 paid to the applicable claimant; and

8 “(ii) deducted from the total amount
9 of damages awarded to that claimant in a
10 civil action against the violator relating to
11 the applicable violation.”;

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

16 (3) in subsection (e), by inserting “or order a
17 refund of money” after “penalty”;

18 (4) in subsection (f), by inserting “, or that is
19 ordered to refund money,” after “assessed”; and

20 (5) in subsection (g), in the first sentence, by
21 inserting “or a refund required under this section”
22 after “penalty”.

23 (b) ENFORCEMENT OF REPARATION ORDERS.—Sec-
24 tion 41309 of title 46, United States Code, is amended—

1 (1) in subsection (a), by striking “reparation,
2 the person to whom the award was made” and in-
3 serting “a refund of money or reparation, the person
4 to which the refund or reparation was awarded”;
5 and

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

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

10 (B) by inserting “(except for the Commis-
11 sion or any component of the Commission)”
12 after “parties in the order”.

13 **SEC. 10. PORT INFRASTRUCTURE PERFORMANCE.**

14 (a) PORT AND INTERMODAL IMPROVEMENT PRO-
15 GRAM.—

16 (1) DEFINITION OF QUALIFYING PORT AUTHOR-
17 ITY.—In this subsection, the term “qualifying port
18 authority” means a container port that is included
19 in the top 10 container ports with respect to the
20 handling of 20-foot equivalent units of containerized
21 cargo, as determined in accordance with the most re-
22 cent documentation published by the Secretary.

23 (2) DATA-SHARING AGREEMENT.—

24 (A) IN GENERAL.—As a condition of re-
25 ceipt of a grant under title 23 or 49, United

1 States Code, a qualifying port authority shall
2 enter into a data-sharing agreement under
3 which the qualifying port authority shall submit
4 to the Secretary the data described in para-
5 graph (3), with a particular emphasis on cargo
6 throughput data, subject to subparagraphs (B)
7 and (C).

8 (B) CONSULTATION.—To the maximum
9 extent practicable, to avoid duplicative reporting
10 of data, the Secretary shall coordinate with the
11 Commissioner of U.S. Customs and Border
12 Protection to receive data previously collected
13 by U.S. Customs and Border Protection for
14 purposes of this subsection.

15 (C) DISCRETION OF SECRETARY.—If the
16 Secretary determines that any data referred to
17 in subparagraph (A) are not feasible to collect,
18 the Secretary may exclude a qualifying port au-
19 thority from the requirement to submit those
20 data.

21 (3) INCLUSIONS.—The data referred to in para-
22 graph (2)(A) include data collected by a qualifying
23 port authority relating to—

24 (A) the total capacity of inbound and out-
25 bound cargo;

1 (B) the total volume of inbound and out-
2 bound cargo;

3 (C) the average number of lifts per hour of
4 containers by crane;

5 (D) the average vessel turn time, expressed
6 by vessel type;

7 (E) the average cargo, container, and
8 intermodal equipment dwell time;

9 (F) port storage capacity and utilization;

10 (G) modal throughput statistics, includ-
11 ing—

12 (i) rail statistics; and

13 (ii) statistics relating to the time re-
14 quired for any single individual or truck
15 trailer to return to the same port or port
16 terminal (commonly known as “truck turn
17 time”);

18 (H) the types of cargo moved;

19 (I) the presence and location of any inter-
20 modal connectors;

21 (J) the physical size of each terminal with-
22 in applicable port boundaries;

23 (K) maximum authorized channel depth
24 and maximum actual and current channel
25 depth;

1 (L) the schedule of vessel arrivals, for use
2 in determining vessel on-time performance;

3 (M) berth utilization; and

4 (N) any additional metrics, as determined
5 by the Secretary.

6 (4) ORIGIN REQUIREMENT.—The data required
7 to be submitted under this subsection shall originate
8 from a port authority of a qualifying port authority
9 grant recipient.

10 (5) PUBLIC ACCESS TO DATA.—The Secretary
11 shall ensure that the data compiled under this sub-
12 section are readily accessible to the public, in accord-
13 ance with applicable security constraints and con-
14 fidentiality requirements.

15 (6) AUTHORIZATION OF APPROPRIATIONS FOR
16 VOLUNTARY DATA-SHARING PILOT PROGRAM.—
17 There is authorized to be appropriated \$150,000 for
18 fiscal year 2023 to the Administrator of the Mari-
19 time Administration to carry out, in consultation
20 with the Director of the Bureau of Transportation
21 Statistics, a voluntary data-sharing pilot program
22 that involves not less than a majority of the types
23 of data described in paragraph (3).

24 (b) ADMINISTRATION OF POLICIES AND PROGRAMS
25 BY OFFICE OF MULTIMODAL FREIGHT INFRASTRUCTURE

1 AND POLICY.—Section 118(d)(3) of title 49, United
 2 States Code (as added by section 21101(a) of the Infra-
 3 structure Investment and Jobs Act), is amended—

4 (1) in subparagraph (A), by striking “and” at
 5 the end;

6 (2) by redesignating subparagraph (B) as sub-
 7 paragraph (C); and

8 (3) by inserting after subparagraph (A) the fol-
 9 lowing:

10 “(B) administer the port and intermodal im-
 11 provement program under section 50302(e) of title
 12 46; and”.

13 **SEC. 11. TEMPORARY EMERGENCY AUTHORITY.**

14 (a) DEFINITIONS.—In this section:

15 (1) COMMON CARRIER.—The term “common
 16 carrier” has the meaning given the term in section
 17 40102 of title 46, United States Code.

18 (2) MOTOR CARRIER.—The term “motor car-
 19 rier” has the meaning given the term in section
 20 13102 of title 49, United States Code.

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

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

4 (b) PUBLIC INPUT ON INFORMATION SHARING.—

5 (1) IN GENERAL.—Not later than 30 days after
6 the date of enactment of this Act, the Commission
7 shall issue a request for information, seeking public
8 comment regarding—

9 (A) whether congestion of the common car-
10 riage of goods has created an emergency situa-
11 tion of a magnitude such that there exists a
12 substantial, adverse effect on the competitive-
13 ness and reliability of the international ocean
14 transportation supply system;

15 (B) whether an emergency order under
16 this section would alleviate such an emergency
17 situation; and

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

20 (2) CONSULTATION.—During the public com-
21 ment period under paragraph (1), the Commission
22 may consult, as the Commission determines to be
23 appropriate, with—

24 (A) other Federal departments and agen-
25 cies; and

1 (B) persons with expertise relating to mar-
2 itime and freight operations.

3 (c) AUTHORITY TO REQUIRE INFORMATION SHAR-
4 ING.—On making a unanimous determination described in
5 subsection (d), the Commission may issue an emergency
6 order requiring any common carrier or marine terminal
7 operator to share directly with relevant shippers, rail car-
8 riers, or motor carriers information relating to cargo
9 throughput and availability, in order to ensure the effi-
10 cient transportation, loading, and unloading of cargo to
11 or from—

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

13 (2) any vessel; or

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

15 (d) DESCRIPTION OF DETERMINATION.—

16 (1) IN GENERAL.—A determination referred to
17 in subsection (c) is a unanimous determination by
18 the commissioners on the Commission that conges-
19 tion of common carriage of goods has created an
20 emergency situation of a magnitude such that there
21 exists a substantial, adverse effect on the competi-
22 tiveness and reliability of the international ocean
23 transportation supply system.

24 (2) FACTORS FOR CONSIDERATION.—In issuing
25 an emergency order pursuant to subsection (c), the

1 Commission shall tailor the emergency order with re-
2 spect to temporal and geographic scope, taking into
3 consideration the likely burdens on ocean carriers
4 and marine terminal operators and the likely bene-
5 fits on congestion relating to the purposes described
6 in section 40101 of title 46, United States Code.

7 (e) PETITIONS FOR EXCEPTION.—

8 (1) IN GENERAL.—A common carrier or marine
9 terminal operator subject to an emergency order
10 issued pursuant to this section may submit to the
11 Commission a petition for exception from 1 or more
12 requirements of the emergency order, based on a
13 showing of undue hardship or other condition ren-
14 dering compliance with such a requirement impracti-
15 cable.

16 (2) DETERMINATION.—The Commission shall
17 make a determination regarding a petition for excep-
18 tion under paragraph (1) by—

19 (A) majority vote; and

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

22 (3) INAPPLICABILITY PENDING REVIEW.—The
23 requirements of an emergency order that is the sub-
24 ject of a petition for exception under this subsection

1 shall not apply to the petitioner during the period
2 for which the petition is pending.

3 (f) LIMITATIONS.—

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

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

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

10 (2) SUNSET.—The authority provided by this
11 section shall terminate on the date that is 1 year
12 after the date of enactment of this Act.

13 **SEC. 12. ADDITIONAL TRANSPORTATION REPRESENTA-**
14 **TION.**

15 Section 1325(a) of title 49, United States Code, is
16 amended—

17 (1) in the matter preceding paragraph (1), by
18 striking “19 members, of which 15 members” and
19 inserting “24 members, of whom 18”; and

20 (2) in paragraph (3)—

21 (A) by redesignating subparagraphs (A)
22 and (B) as clauses (i) and (ii), respectively, and
23 indenting appropriately;

24 (B) in the matter preceding clause (i) (as
25 so redesignated), by striking “(3) The remain-

1 ing 6 members of the Council shall” and insert-
2 ing the following:

3 “(3)(A) The remaining 9 members of the Coun-
4 cil shall be appointed to”;

5 (C) in subparagraph (A) (as so des-
6 ignated)—

7 (i) in clause (i) (as so redesignated),
8 by striking “and” at the end;

9 (ii) in clause (ii) (as so redesignated),
10 by striking “organizations (as determined
11 by the Chairman).” and inserting “organi-
12 zations, as determined by the Chairman;
13 and”;

14 (iii) by adding at the end the fol-
15 lowing:

16 “(iii) at least 1 shall be a representa-
17 tive of marine terminal operators or
18 ports.”; and

19 (D) by adding at the end the following:

20 “(B) Nothing in this paragraph limits any pro-
21 vision relating to the appointment of the members
22 under paragraph (2).”.

23 **SEC. 13. PERMANENT WAIVER.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law, the Administrator of the Federal Motor Car-

1 rier Safety Administration shall make permanent the
2 waiver described in the document issued by the Adminis-
3 trator entitled “Waiver for States Concerning Third Party
4 CDL Skills Test Examiners In Response to the COVID-
5 19 Emergency” and dated August 31, 2021.

6 (b) RULEMAKING.—Not later than 90 days after the
7 date of enactment of this Act, the Administrator of the
8 Federal Motor Carrier Safety Administration shall revise
9 section 384.228 of title 49, Code of Federal Regulations,
10 to provide that the waiver referred to in subsection (a)
11 shall be permanent.

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