



## OSRA Will Become Law This Week – What Does It Do?

After two years of effort by agriculture exporters, retailers, and others this week the House, as early as this evening, will pass the Ocean Shipping Reform Act of 2022; the President will sign it.

The Senators and Representatives who sponsored the House and Senate OSRA bills, are, today addressing the 34<sup>th</sup> Annual Meeting of the Agriculture Transportation Coalition (the AgTC), attributing their motivation for advancing OSRA, to the needs and efforts of the agriculture export community, members of the AgTC

For a Summary of Ocean Shipping Reform Act of 2022, see below. It explains why OSRA is needed, who supports is, who opposes, the problems it is designed to address, the timetable, impact on an energized Federal Maritime Commission, and next steps.

To see the full bill text, S.3580, [click here](#).

### Why is OSRA Needed?

The Shipping Act authorizes the Federal Maritime Commission (FMC) to regulate the ocean container carriers and marine terminals, in the interests of the US shipping public. Nonetheless, dramatic ocean carrier consolidation, from 20+ ocean container carriers just 20 years ago, to 11 carriers now further combined into 3 “Alliances”, has led the current crisis.

Skyrocketing freight rates, and punitive demurrage and detention charges costing exporters and importers hundreds of millions of dollars each month, even though the FMC 2 years ago ruled those to be unreasonable, and thus illegal. Until the past two months, the carriers ignored that ruling, and continued the abusing practice.

Meanwhile the carriers have regularly declined to carry agriculture and other exports, preferring to return to Asia quickly with empty containers, to load higher freight revenue consumer goods heading back to the US.

For agriculture exporters, these carrier practices have cost dramatic financial losses and lost foreign sales. Meanwhile the ocean carriers have issued Quarterly financial reports touting unprecedented billions of dollars of profit, allowing them to purchase airlines, marine terminals, etc

“Congestion at ports and increased shipping costs pose unique challenges for U.S. exporters, who have seen the price of shipping containers increase four-fold in just two years, raising costs for consumers and hurting our businesses. Meanwhile, ocean

carriers that are mostly foreign- owned have reported record profits,” said Sen. Amy Klobuchar (D-Minn.), the bill’s sponsor after the Senate passed the measure.

The FMC has claimed to lack the authority needed to restrain unreasonable carrier practices, and to protect and advance the interests of the US shipping public (exporters and importers). The Commission’s authority stems from the Shipping Act of 1984, updated by the 1998 Ocean Shipping Reform Act (Public Law 105-258). By passing OSRA, Congress is providing the FMC with the authority it says it needs.

## **OSRA 2022 Ocean Carrier Requirements**

Carriers would be prohibited from:

- “Unreasonably” refusing cargo space accommodations when available.
- Assessing fees that don’t comply with applicable regulations.
- Providing inaccurate invoices for demurrage or detention charges — late fees that carriers charge for holding cargo or assets beyond a contracted time period.
- Giving unreasonable preference to any commodity group or shipment or disadvantaging any group or shipment. – this could include export cargo, if carrier is found to be regularly declining to accept it. [Note the House version of OSRA would have explicitly required carriers to accept export cargo, so long as it can be loaded/carried safely, is timely delivered to the carrier, and is destined for the same ports as the carrier is already scheduled. While this explicit requirement was not included in the Senate bill, there is an expectation that the FMC will pursue the objective of getting our exports on ships in a timely manner, and that carriers cease to unreasonably decline to carry them.]

**Demurrage and Detention Fees:** Rather than the current practice of carriers imposing charges, without any supporting documentations, under OSRA, invoices would have to include accurate detailed information on a container’s availability date, port of discharge, free time, rates, and contact information, among other items. Shippers wouldn’t be obligated to pay fees if an invoice is inaccurate.

The FMC could impose penalties or require refunds if it finds that a carrier’s invoice includes false or inaccurate information. It would have to investigate complaints regarding charges assessed by carriers and publish results of investigations on its website. Carriers would bear the burden of proving the reasonableness of any charges.

**[NOTE:** in recent months, the FMC, even before OSRA has been enacted, but energized by:

- a new slate of Commissioners,
- intensive scrutiny by the White House,
- Congressional hearings
- the rapid advance of OSRA,

has found the authority it has for decades said it lacked (even though granted by the 1984 Shipping Act,) and is imposing significant fines on ocean carriers for unfair, unreasonable detention/demurrage charges. Hapag Lloyd - \$2 million, Wan Hai - \$800,000. While large, they pale by comparison to the announced monthly profits of these carriers, hundreds of millions of dollars – monthly.]

Ocean carriers would be responsible for refunds or penalties in cases in which a non-vessel operating carrier provides a shipper with an invoice from the ocean carrier, and the commission finds that the non-vessel operating carrier isn't responsible for the charge.

The commission would have to disclose findings of false invoices by common carriers in addition to penalties that it has imposed or assessed against them for violations of ocean shipping regulations.

**Rulemaking Processes:** As any bill passed by Congress the Federal agency charged with implementing it, must undertake a Rulemaking. In fact, under OSRA, the FMC will have to initiate, in short order, over a dozen Rulemakings. These can take from 5 months to a year or longer.

The FMC would have to issue a rule to define prohibited practices related to demurrage and detention fee assessments for carriers, marine terminal operators, shippers, and ocean transportation intermediaries. The rule would clarify the FMC's Interpretive Rule on Detention and Demurrage published in May 2020, including which parties should be billed for demurrage, detention, and other "per container" charges.

The Commission would also have to define "unfair or unjustly discriminatory methods" and "unreasonable refusal" to negotiate vessel space (for exports generally or a specific importer or exporter) through rulemaking processes.

The Commission could require service contracts between ocean carriers and shippers to include any terms it deems appropriate through a rulemaking process.

**Retaliation:** Carriers, marine terminal operators, and ocean transportation intermediaries would be barred from retaliating against shippers, their agents, ocean transportation intermediaries, or motor carriers by denying them available cargo space accommodations or subjecting them to other discriminatory action if they choose to patronize another carrier or file a complaint. Carriers are already prohibited from using retaliatory measures under current law.

## **Federal Maritime Commission**

The measure would authorize \$32.9 million for FMC activities in fiscal 2022, increasing each year to \$49.2 million by fiscal 2025. The commission's fiscal 2021 authorization was \$29.6 million, and it received \$32.9 million in the fiscal 2022 omnibus spending package (Public Law 117-103).

The FMC would have to:

- Establish a webpage for complaint submissions and investigation requests.
- Maintain an Office of Consumer Affairs and Dispute Resolution Services to provide support for resolving disputes related to shipments and cruises under its jurisdiction.
- Hire additional staff to assist with investigations and oversight.

**Shipping Emergencies:** The commission would have to issue a request for information within 60 days of enactment to determine if an emergency order could be used to reduce congestion and maintain the reliability of the international ocean transportation supply system. If the commission reaches a unanimous decision that such congestion has created an emergency

situation, it could require carriers to share information directly with shippers and other carriers regarding cargo transport capacity to ensure efficient operations.

Any order would remain in effect for 60 days and could be renewed by a unanimous determination. The authority would sunset 18 months after the bill's enactment. Common carriers subject to an emergency order could petition for an exception based on undue hardship or other condition.

**Shipping Exchange Registries:** Operators of shipping exchanges — platforms that connect shippers with common carriers to enter agreements — within the US international ocean transportation system would have to register with the commission.

The FMC could provide an exemption if it finds the exchange is regulated by a comparable system in the country where the shipping exchange is headquartered. The commission would have to set standards for registered national shipping exchanges within three years of enactment.

**Chassis Pools:** A prominent component of the ongoing ocean shipping crises, has been the chronic shortage of chassis – the basic trailer on which a chassis is loaded when it moves to or from a marine terminal. Under OSRA, the FMC would enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to develop best practices for on-terminal or near-terminal chassis pools that provide service to marine terminal operators, motor carriers, and other stakeholders with the objective of optimizing supply chain efficiency.

**Reports:** The bill would expand the commission's annual report to Congress to include any concerning practices by carriers that are state-owned or headquartered in a country identified as a nonmarket economy. The FMC would also have to report each quarter on the amount of import and export tonnage and the total number of loaded and empty 20-foot equivalent units per vessel at US ports.

## **Who Supports/Opposes OSRA?**

More than 100 groups SUPPORT the bill, including the Agriculture Transportation Coalition, American Association of Port Authorities, American Trucking Associations, and National Retail Federation, according to Klobuchar's news release. The unanimous Senate passage and the overwhelming House passage suggests that Congress senses that support is universal.

However, the World Shipping Council, which represents carriers, has consistently opposed OSRA and all FMC and Congressional efforts to address the ongoing shipping crisis, opposing the FMC Interpretive Rule, the House and Senate OSRA bills. Yet the Council has not proposed any specific steps that its member carriers could or should take. Understandable, as, according to some analysts, the status quo is generating greater monthly profits for its member carriers than they have enjoyed in the entire past decade.

## **Bipartisan Legislative History**

The House passed H.R. 4996 from Rep. John Garamendi (D-Calif.) and Rep. Dusty Johnson (R-SD) by a vote of 364-60 on Dec. 8, 2021. The Senate amended and passed the bill, called the "Ocean Shipping Reform Act," sponsored by Senators Klobuchar and Thune, by voice vote on March 31.

The House will vote and pass (overwhelmingly) S. 3580 at the very beginning of the week of June 13 under suspension of the rules. On June 9 and again June 13, President Joe Biden said he is "looking forward to signing it."

## **Other Provisions of OSRA**

**Dwell Time Statistics:** The Bureau of Transportation Statistics would collect data from ports, marine terminal operators, and chassis owners and providers with fleets of over 50 chassis on the amount of time a piece of equipment is used outside of the terminal, also called "street dwell time."

The bureau would be directed to publish data on a local, regional, and national basis to the maximum extent possible. Its authority to collect and publish data would expire on Dec. 31, 2026.

**Licensing Waiver Review:** The Federal Motor Carrier Safety Administration would have to conduct a review of the Aug. 31, 2021, discretionary waiver authority it provided to states to extend commercial driver's licenses and waive other regulations in response to the Covid-19 pandemic. The department would review the waiver authority for safety and make the authority permanent barring any concerns.

**Transportation Worker Credentials:** The Transportation Department and Coast Guard would be directed to prioritize and expedite consideration of the Transportation Worker

Identification Credential for applicants who demonstrate they are providing direct assistance to U.S. ports.

**Hazardous Materials:** The Government Accountability Office would review whether ocean carriers are making “systemic decisions” to discriminate against transport of hazardous materials, including by “unreasonably” denying vessel space accommodations.

**Inland Ports:** The Transportation Department would meet with representatives of major ports, ocean carriers, railroads, trucking companies, and workers to discuss the feasibility of identifying land, including inland ports, to store and transfer containers due to port congestion. It would have to report its findings to Congress.

For further information:

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