

U.S. House passes the Ocean Shipping Reform Act, with Biden set to sign it into law

Following its passage by the U.S. Senate in late March, the U.S. House of Representatives last night followed suit, passing the Ocean Shipping Reform Act (OSRA) of 2022 by a 369-42 margin. The bill is now headed to President Biden's desk to be signed into law, and will represent the first revamping of U.S. ocean shipping laws going back to 1998.



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By Jeff Berman, Group News Editor · June 14, 2022

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This represents the most recent, and most important, sign of progress for OSRA, including: passage by a voice vote; getting bipartisan approval from United States Senate Committee on Commerce, Science, and Transportation on March 22; and OSRA being passed in December 2021 by the United States House of Representatives by a convincing 364-40 vote and its subsequent introduction into the Senate in February by Senator Amy Klobuchar (D-Minn.) and Senator John Thune (R-S.D.). The House version of the bill was introduced by Representatives John Garamendi (D-CA) and Dusty Johnson (R-SD) in August



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2021, with the objective of making the Federal Maritime Commission (FMC) “a more effective federal regulator.”

Key components of the House version of the Ocean Shipping Reform Act of 2022 include:

- prohibiting ocean carriers from unreasonably refusing cargo space accommodations for U.S. exports and from discriminating against U.S. exporters;
- promoting transparency by requiring ocean common carriers to report to the FMC each calendar quarter on total import/export tonnage and twenty-foot equivalent units (loaded/empty) per vessel that makes port in the United States;
- authorizing the FMC to self-initiate investigations of ocean common carrier’s business practices and apply enforcement measures, as appropriate; and
- establishing new authority for the FMC to register shipping exchanges to improve the negotiation of service contracts, among others

The House’s December passing of this bill followed a November endorsement issued by the White House, amid various federal efforts to help curtail port congestion and global supply challenges, stemming from the pandemic. At the time, the White House noted that Congress needs to provide the FMC with an updated toolbox needed to protect exporters, importers, and consumers from what it called unfair practices, adding that this bill serves as a good first step on the path to the “longer-term reform to shipping laws that would strengthen America’ global competitiveness.

FMC Chairman Daniel Maffei said that OSRA provides needed and overdue updates to the laws enforced by the FMC.

“These changes will have a beneficial effect on how U.S. shippers are served and will bring more accountability to how ocean cargo services are provided,” said Maffei. “We will move promptly to implement the steps necessary to bring shippers the benefits of the legislation, beginning with the rulemaking addressing export shipments. OSRA will provide the FMC with enhanced authority to ensure industry players have the right incentives and that all stakeholders in the ocean freight transportation system can have a voice.”

President Biden explained that in his State of the Union address, he called on Congress to address ocean carriers’ high prices and unfair practices because rising ocean shipping costs are a major contributing factor to increased costs for American families.

“During the pandemic, ocean carriers increased their prices by as much as 1,000%,” he said. “And, too often, these ocean carriers are refusing to take American exports back to Asia, leaving with empty containers

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instead. That's costing farmers and ranchers—and our economy—a lot of money. This bill will make progress reducing costs for families and ensuring fair treatment for American businesses—including farmers and ranchers. I look forward to signing it into law.”

National Industrial Transportation League (NITL) General Counsel Karyn Booth, who served a key role in writing and editing text for both the House and Senate versions of OSRA, told **LM** that OSRA represents an attempt to address the current day problems, as U.S. importers and exporters have been facing some unprecedented challenges over the last couple of years.

“The service has just been horrendous, and they cannot get timely, or adequate vessel space,” said Booth. “They have been unable to negotiate fair contract terms with their carriers to deal with these problems, which led to the need for [assessing] what is the current state of the law and how do we update the law to ensure that the right tools are there for the FMC to handle unfair business practices. OSRA is fairly focused on international ocean carrier conduct and practices, and it is designed to deal with potential unfair business practices, what are called ‘prohibited acts’ in the law. And Congress has now updated those provisions to specifically deal with the challenges of today...clarifying that things unreasonable reductions in service and basically unreasonable denials of vessel space will be able to be specifically addressed now through FMC claims.”

What's more, Booth explained how the bill has a sharp focus on detention and demurrage, with a major part of the bill's objectives focused on rising costs. While the FMC does not have jurisdiction over rates in the same manner that the Surface Transportation Board has to deal with setting freight railroad rates, Booth the focus on detention and demurrage problems assessed against cargo left at a port beyond a free time period—when delays are not the cause or fault of the importer—will give more tools to the FMC to address these problems through prohibitive acts, detention and demurrage changes, among other actions.

“There are going to be some rulemakings to kind of flesh out what these new provisions mean, and I think that is going to be the important next step here,” she said. “The FMC is going to have to do some rulemaking around detention and demurrage rules, unreasonable refusals to deal or negotiate on these vessel space issues, as well as any potential sort of unfair or unjustly discriminatory conduct.”

Ben Hackett, founder of maritime consultancy Hackett Associates, told **LM** that OSRA provides the FMC with clearer guidelines, as to its ability to consider the whole of the supply chain impacting shipping.

“What is surprising is that President Biden appears to take it as a given that it is the container shipping sector which has been the primary driver of inflation through its freight rate increases and manipulation of capacity,” he said. “This despite the finding by the FMC that the problem lies on the landside and the difficulties arising with staffing due to Covid and actions taken to furlough staff and only slowly bringing them back. There is not much mention of the fact that consumer demand for retail goods and online purchasing has put significant pressure on the supply chain and available warehousing. Ships waiting for two or more weeks to dock in U.S. ports and in some of the major Chinese ports due to the Covid zero shutdowns is the main culprit for capacity constraints.”

Feedback on OSRA from the World Shipping Council (WSC) had a different take on what factors are causing ongoing supply chain snarls OSRA is taking steps to address.

WSC officials said that throughout the pandemic, ocean carriers have gone “all-out” to keep goods moving, deploying every available vessel and container, as well as increasing sailings, and investing in the future. It highlighted that in 2021 carriers ordered 555 vessels worth \$42.5 billion, with 208 vessels worth \$18.4 billion ordered year-to-date in 2022.

“But as long as America’s ports, railyards, and warehouses remain overloaded and unable to cope with the increased trade levels, vessels will remain stuck outside ports to the detriment of exporters, as well as exporters,” said WSC officials. “We are appalled by the continued mischaracterization of the industry by U.S. government representatives, and concerned about the disconnect between hard data and inflammatory rhetoric. The 22 (not nine) international carriers that serve the American people, industry and government on the Asia-United States trade are part of the global supply chain that has built this country, importing and exporting food, medicine, electronics, chemicals, and everything else we depend on. The increased rate levels we have seen over the past years are a function of demand outstripping supply and landside congestion, exacerbated by pandemic-related disruption. Until the import congestion is remedied, export congestion will persist. Ocean carriers continue to move record volume of cargo and have invested heavily in new capacity—America needs to make the same commitment and invest in its landside logistics infrastructure.”

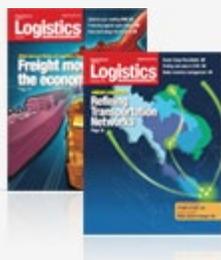
About the Author



Jeff Berman, Group News Editor

Jeff Berman is Group News Editor for **Logistics Management**, **Modern Materials Handling**, and **Supply Chain Management Review**. Jeff works and lives in Cape Elizabeth, Maine, where he covers all aspects of the supply chain, logistics, freight transportation, and materials

handling sectors on a daily basis. [Contact Jeff Berman](#)



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