

OCEAN SHIPPING REFORM ACT OF 2021

Sponsors: Reps. John Garamendi (D-CA) and Dusty Johnson (R-SD)

Endorsements:

Section-by-Section Summary

Section 1: Short Bill Title

Section 2: Purposes

- Updates and improves the purposes of the Shipping Act to better reflect current federal policy governing international ocean shipping.
- Directs the FMC to promote fleet of US-flagged vessels to meet commercial needs, not just national security.
- Establishes reciprocal trade as part of FMC's mission in enforcing the Shipping Act.

Section 3: Service Contracts

- Authorizes the FMC to stipulate additional minimum requirements for service contracts by ocean common carriers, at the agency's discretion.
- Expands the FMC's unreasonable practice jurisdiction to service contracts when an ocean common carrier is engaging in unfair contracting practices on a widespread basis.

Section 4: Shipping Exchange Registry

- Establishes new authority for the FMC to register shipping exchanges and issue licenses for registered exchanges to operate.
- Licensing will ensure industry-wide compliance with federal law and FMC regulations for ocean shipping industry and promote widespread adoption of best practices.

Section 5: Prohibition on Retaliation

- Applies anti-retaliation safeguards to all regulated entities and protects those filing complaints about potentially unlawful conduct or anticompetitive business practices to the FMC.

Section 6: Public Disclosure

- Requires the FMC to publish online all findings of false certifications for demurrage and detention charges and any resulting penalties imposed.
- Enhances public transparency for FMC actions and bad actors in ocean shipping industry.

Section 7: Common Carriers

- Updates requirements on ocean common carriers to incorporate best practices in the shipping industry.
- Prohibits ocean common carriers from unreasonably declining export cargo bookings if the cargo can be loaded in a safe and timely manner.

- Requires ocean common carriers or marine terminal operators to certify that any demurrage or detention charge complies with FMC regulations, or face penalties.
- Limited exemption for marine terminal operators for any terminal detention or demurrage charges if such charges are based on public port tariffs set under State law.
- Effectively codifies the FMC's "Interpretive Rule on Demurrage and Detention Under the Shipping Act" (Docket No. 19-05).
- Obligates ocean carriers to adhere to minimum service standards that meet the public interest, determined by the FMC in new required rulemaking.
- Requires ocean carriers or marine terminal operators to maintain all records regarding invoiced demurrage or detention charges for at least 5 years and provide such records to the FMC or invoiced party on request.
- Shifts burden of proof in any proceeding with the FMC regarding the reasonableness of demurrage or detention charges from the invoiced party to the ocean carrier or marine terminal operator.
- Prohibits ocean carriers from declining opportunities for U.S. exports unreasonably, as determined by the FMC in new required rulemaking.

Section 8: Assessment of Penalties

- Authorizes the FMC to order refund relief in addition to civil penalties in enforcement proceedings.

Section 9: Data Collection

- Requires 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.

Section 10: Complaints

- Permits third-party challenges to anticompetitive agreements for complaints filed with the FMC
- Establishes new, separate process for addressing demurrage and detention complaints, allowing the FMC to take a more active role in investigating such complaints. Currently, many shippers are reluctant to file complaints due to the complexity, expense, and time involved with the adjudication of such complaints.
- Allows FMC to order automatic and full refund of any detention and demurrage charges paid if accompanied by a certification of compliance with federal law/regulations found to be false due to negligence.

Section 11: Investigations

- Authorizes the FMC to self-initiate investigations of additional carrier practices and apply enforcement measures, as appropriate.

Section 12: Award of Additional Amounts

- Authorizes the FMC to order double reparations for violations of existing prohibition (under 46 U.S.C. § 41102(c)) on unjust or unreasonable practices in handling property by ocean common carriers, marine terminal operators, or ocean transportation intermediaries.
- Also authorizes the FMC to order double reparations for knowingly false certification of compliance with federal law/regulations required to accompany any detention and demurrage charge.

Section 13: Injunctive Relief

- Permits third-party intervenors in court proceedings initiated by the FMC seeking injunctive relief against agreements that reduce competition in the ocean shipping industry.

Section 14: Enforcement of Reparation Orders

- Authorizes parties owed refund ordered by the FMC to seek enforcement of that payment in federal district court.

Section 15: National Shipper Advisory Committee

- Specifies that newly established and Congressionally authorized [Advisory Committee](#) may include customs brokers and freight forwarders who participate in ocean shipping commerce.

Section 16: Annual Report to Congress

- Adds reporting on anticompetitive business practices, nonreciprocal trade practices, or other factors exacerbating the United States' trade imbalance with foreign exporting countries in the FMC's annual report to Congress required under current law.
- Directs FMC to examine foreign state control or undue influence over ocean carriers' business practices and ramifications for the global shipping industry.

Section 17: Technical Amendments

- Corrects typos, errors, and outdated citations in current law pertaining to the Federal Maritime Commission or the Shipping Act.