

Ocean Shipping Reform Act of 2022 (Klobuchar-Thune)

Senators Klobuchar and Thune are working to introduce the Senate companion to the *Ocean Shipping Reform Act of 2021*, led in the House by Reps. Garamendi (D-CA) and Johnson (R-SD), along with Senators Baldwin and Hoeven. The bill aims to level the playing field for American exporters by making it harder for ocean carriers to unreasonably refuse goods ready to export at ports. The bill also gives the Federal Maritime Commission (FMC) greater rulemaking authority to prevent harmful and discriminatory practices by carriers and requires carriers to report how many empty containers they are transporting. In addition, the bill directs the FMC to set rules on what fees carriers can reasonably charge shippers.

Problem: Agricultural exports have been particularly hard hit by increased costs and transportation challenges.

- Over the last two years, agricultural exporters have lost 22 percent of sales.¹
- Meanwhile, ocean carriers have reported record profits from the increased demand for imported goods and higher price for container shipments.²
- Reports highlight agricultural exports sitting at ports while ocean carriers return to Asia with empty containers.³ Between July and December of 2020, carriers rejected at least \$1.3 billion in U.S. agricultural exports.⁴

The Senate version of the *Ocean Shipping Reform Act of 2021* would:

- Require ocean carriers to certify that any late fees—known in maritime parlance as “detention and demurrage” charges—comply with federal regulations or face penalties.
- Shift burden of proof regarding the reasonableness of “detention or demurrage” charges from the invoiced party to the ocean carrier that issues the charge.
- Prohibit ocean carriers from declining opportunities for U.S. exports unreasonably, as determined by the FMC in new required rulemaking.
- Require ocean common carriers to report to the FMC how many empty containers they are transporting.
- Authorizes the FMC to self-initiate investigations of ocean common carrier’s business practices and apply enforcement measures, as appropriate.
- Establishes new authority for the FMC to register shipping exchanges.

The following provisions in the House version are not included in the Senate version:

- Requiring ocean carriers to adhere to minimum service standards that meet the public interest, reflecting best practices in the global shipping industry.
- Prohibiting carriers from failing to furnish or cause a contractor to fail to furnish the facilities and instrumentalities needed to perform the transportation services.
- Explicit prohibition of carriers from declining export booking.
- Allowing third parties to intervene in FMC action against ocean carriers alleging anticompetitive conduct.

¹<https://www.businessinsider.com/shipping-crisis-american-farm-exports-hit-containers-leave-california-empty-2021-11>.

²<https://www.bloomberg.com/news/articles/2021-12-01/maersk-heading-for-record-profits-gives-80-million-to-employees>

³<https://www.mprnews.org/story/2021/09/23/shipping-disruptions-slow-minnesota-crop-exports-increase-food-costs>.

⁴<https://www.cNBC.com/2021/01/26/shipping-carriers-rejected-us-agricultural-exports-sent-empty-containers-to-china.html>