

Recommendation

Investigate the ocean carrier practice of charging exporters with demurrage or detention fees for early return of cargo, or late delivery of cargo, when the Cargo Receiving Window (Early Return Date (ERD). Documentation Cutoff Date, and Physical Cargo Cutoff Date) is changed without reasonable notice for cargo that is already in the process of or is actually delivered to pier within the original booking confirmation cargo receiving window.

Purpose: Vessel schedule integrity has never been worse since the onset of supply chain disruption caused by the Covid-19 pandemic. Terminal congestion and delays has resulted in the constant jockeying of vessel berthing and cargo operations schedules resulting in export cargo receipt date changes. All too often however, these dates are changed without adequate notice given to the exporter. Lack of proper notification from ocean carriers on vessel changes, early return dates, and cut dates also affect rail, trucking, and inland terminals.

Ocean carriers are not giving adequate lead time on ERD changes for exporters to alter scheduled dispatch and loading times for cargo that may be hundreds of miles inland requiring days of preplanning.

In some cases, ocean carriers are not informing shippers of the change at all, and the changes are identified when drayage companies arrive with loaded containers. Changes can also take place after part of a shipment already has containers out against it. Additionally, shippers bear unplanned additional costs that can include more chassis rental fees, dry run fees, yard storage of drayage company yard, additional truck moves to rail ramp or port and other charges because of these last-minute changes.

ERD Notification:

It is our recommendation that all ocean carriers are required to provide an early return date on all booking confirmations.

It is also our recommendation that when an ocean carrier changes the ERD, the following must apply:

- The ERD date applicable for a shipment will be the one in effect at the time the empty container has been picked up from the terminal.
 - If the ERD date is changed, detention will not apply for any days between the original EDR and the revised ERD that the container remains outside the terminal.
 - If the ERD date is pushed back, demurrage will not apply for any container in gated into the terminal for any days between the original EDR and the revised ERD that the container rests inside the terminal.
 - If there are multiple containers on the Booking and carrier chooses to split the booking, then demurrage will not apply for any container in-gated into the terminal prior to the change in ERD, and fees to split the booking will not be assessed by the carrier.

It is also our recommendation that inland terminals and ports honor the original ERD when there is activity on a booking (containers pulled). Some USA ports (Norfolk) have already implemented this policy.

ERD Demurrage: On the export side of the business, ocean carriers are constantly updating or changing their Early Return Dates (ERD) for faltering vessel schedule integrity. Exporters should not be held liable for charges on containers delivered within a previously announced cargo receiving window, that were dispatched, loaded, railed, or were otherwise in the process of being returned when the ERD changed.

While it is understood that vessel planning is complex, there is also a timing issue on the ever-changing ERD announcements that should not be applied to all cargo having already been in motion based on the best information provided at the time of dispatch. Certainly, the further away the loading point, the more leeway that should be granted by the ocean carrier to accept the cargo. Computer generated invoicing for these changes is causing a 'bill first – argue later' scenario that results in much time and effort after the fact to correct. Guidelines are needed for ERD changes that result in charges to the exporter.

We recommend that ocean carriers should be required to internally audit all demurrage/detention invoices for errors before sending out. They must consider scenario's where empty containers are pulled for export, and then booking is rolled by ocean carriers due to vessel delay. Another scenario is where export returns a loaded container within the ERD dates, and carrier rolls their vessel causing demurrage at inland rail, container yard, or port of export. These scenarios should not be billed to the exporter of record as long as they followed the initial ERD and Cut dates as provided by the ocean carrier or terminal.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission codify regulation in concert with the Interpretive Rule that prohibits any unreasonable application of charges on containers for Early Return Dates (ERD) changes, documentation cut dates, and cargo cut dates while shifting the burden of proof to vessel operators and/or marine terminals and strengthening requirements for reasonable and timely dispute resolution.