

August 31, 2022

Chairman Daniel Maffei
Commissioners Carl Bentzel, Rebecca Dye, Louis Sola, Max Vekich
Federal Maritime Commission
800 North Capitol Street NW
Washington, D.C. 20573

Subject: Recommendations that NSAC has voted to approve and submit to the Commission

Dear Chairman Maffei and Commissioners Bentzel, Dye, Sola, and Vekich:

I am writing to formally notify you that the members of the National Shipper Advisory Committee (NSAC) have continued their work diligently in their subcommittees and our most recent full committee meeting on August 10, 2022. The full committee has drafted, debated, voted upon, and subsequently approved another two recommendations for the consideration of the Federal Maritime Commission. These recommendations are summarized below, but each recommendation in full has been attached to the e-mail containing this letter.

Recommendation 1: *A recommendation to 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 strengthening requirements for reasonable and timely dispute resolution.*

Recommendation 2: *A recommendation to initiate the establishment of an Ocean Carrier Advisory Committee comprised of ocean container carriers serving the United States within one hundred and twenty (120) days.*

Your responses to our previous recommendations were well received and appreciated, and we look forward to receiving your responses following your consideration of these two latest documents.

Should the Commission have any questions related to these two recommendations, please contact either myself or Mr. Rich Roche (rroche@mohawkglobal.com) or Mr. Gabriel Rodriguez (gabriel@acb-us.com).

Sincerely,

Brian Bumpass
Chairman, National Shipper Advisory Committee

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National Shipper Advisory Committee to the Federal Maritime Commission (FMC)
Sub-Committee: Fees/Surcharges

Recommendation

We recommend the Federal Maritime Commission 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 delivered to pier within the ERD at time of motion. Additionally, we recommend the Federal Maritime Commission prohibit Marine Terminal Operators from invoicing shippers directly for detention and demurrage that is not compliant with carriers' ERD at time of motion.

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 and Marine Terminal Operators bill carriers directly for demurrage accrued as a result of vessel schedule disruption

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 ERD and the revised ERD that the container remains outside the terminal.
- If the ERD date is pushed back, demurrage will not apply for container in-gated into the terminal for any days between the original ERD 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 if received within ERD at time in motion if returned to.

Additionally, we recommend the Federal Maritime Commission prohibit Marine Terminal Operators from invoicing shippers directly for detention and demurrage and require carriers to pass through appropriate D&D to shippers that is compliant with the published ERD at time of motion.

Finally, we recommend The Commission require carriers to provide shippers with booking receiving window updates no later than 3 working days prior to the most recent empty container pickup date from the booking confirmation, so shippers have adequate time to react.

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 strengthening requirements for reasonable and timely dispute resolution.

National Shipper Advisory Committee to the Federal Maritime Commission (FMC)
Sub-Committee: Data & Visibility

Recommendation

In accordance with Fact Finding 29 and the recently announced data collection initiative mandated by the Ocean Shipping Reform Act, we recommend the Federal Maritime Commission initiate the establishment of an Ocean Carrier Advisory Committee comprised of ocean container carriers serving the United States within one hundred twenty days (120) days.

Purpose: The Federal Maritime Commission defines the ocean carrier universe as carriers that transport 1,500 or more 20-foot equivalent units per month (total across imports and exports, 3 regardless of whether they are laden or empty) in or out of U.S. ports in international common carriage. The Commission estimates approximately 70 of the 154 currently registered vessel-operating common carriers transport 1,500 or more 20-foot equivalent units per month, totaling over 99 percent of imported and exported containerized cargo.

Historically, shippers could collectively engage with the ocean carriers at the conference and then discussion level agreements for industry level conversations on national priorities. Today, shippers must have one-on-one conversations on national and regional priorities. These conversations diminish efforts to discuss national concerns.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend the Federal Maritime Commission initiate the establishment of an Ocean Carrier Advisory Committee comprised of ocean container carriers serving the United States within the one hundred twenty (120) days.