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OSRA-22 took barely a year to pass from its inception, compared with seven years of discussion prior to the passage of its predecessor in 1998. Photo credit: Shutterstock.com.

Condensed timelines for the passage and implementation of the Ocean Shipping Reform Act of 2022 (OSRA-22) are preventing the law from living up to its intended purpose when it comes to addressing longstanding problems with demurrage billing.

OSRA-22 was signed into law by President Joe Biden June 16, less than a year after its initial inception as a draft bill in the House of Representatives. Perhaps more importantly, the law provided no grace period for compliance despite mandating changes to longstanding carrier billing practices.

By comparison, the last major US regulatory reform — OSRA-98 — became law after seven years of discussion about how to update the Shipping Act of 1984 and included a six-month waiting period prior to enforcement.

That lack of implementation time has essentially doomed the industry to be largely out of compliance with a specific mandate in OSRA-22, a new invoice data element intended to protect shippers from being wrongly billed for excess storage of laden import boxes in container terminals.

The law requires demurrage invoices sent from either a shipping line or a terminal to an importer or its receiving party — generally drayage operators or customs brokers that manage drayage on behalf of the importer — to be accurate and to contain 13 data elements, including the “date that container is made available.”

But software vendors have told JOC.com that the new “container available” data element doesn’t really exist, and where it does exist, is not universally conveyed, much less in a standardized way. Such a message is key, because demurrage is calculated based on a contracted number of free time days from the date at which a container is made available for pickup.

As Bryn Heimbeck, CEO of import management technology provider TradeTech, put it, “there’s not yet a mechanism to send this data element from one end and to receive it on the other.”

That’s not to say that container lines or terminals don’t specify the date a container is made available in many cases. It’s just that the messages to convey that milestone show up in various guises, such “in port available,” “container available,” or “import ready for pickup.” Sometimes, the receiving party — e.g., a drayage provider entrusted to handle picking up containers — can only determine the availability of a specific box by accessing a terminal portal, or when attempting to make an import pick-up appointment.

The relatively short period between OSRA-22's formation and its passage and the lack of a grace period for compliance mean that technical issues are preventing the industry from adhering to those new mandates. But the software providers, who are largely complimentary of the law's attempts to reshape an out-of-whack demurrage billing process, say those technical gaps have created a situation in which the impact of the law is not yet living up to the spirit of its original intent.

In other words, importers and their representatives are not seeing a vast improvement in their experience because the process has not fundamentally changed, even with the new focus on invoice accuracy and container availability information. Terminals do not allow a container to be outgated until all charges — including demurrage — have been settled. Container lines have direct relationships with importers, while any information on container availability is generally conveyed between the terminal and the drayage provider.

In addition, the process for challenging charges that an importer or drayage provider believes to be inaccurate is still cumbersome. Although OSRA-22 provides for an expedited complaint process, even in a best-case scenario, that party's cash would still be tied up for months. If the intent of OSRA-22 was to shift the invoicing burden of proof to container lines and terminals, the technical and physical processes still in place, three months after the law went into effect, are not allowing that shift to happen.

Heimbeck, for instance, suggested a grace period that would enable software vendors that connect container lines and terminals to importers to establish a "container available" notification that would tie into invoice creation. That means the container available data element required by OSRA-22 would link back to an actual event that importers and their partners could use to plan pick-up operations based on when the demurrage clock starts.

The implementation of a mandate for US motor carriers to install electronic logging devices (ELDs) in their trucks in late 2017 and early 2018 offers another example of an effective grace period for freight transportation reform. The requirement that truckers move from paper logs to electronic versions was initially written into law in 2012, but the mandate didn't become official until December 2017 and wasn't enforced until April 2018.

Part of the lag between passage of the ELD law and its effective date can be attributed to the time it took to physically equip a large, fragmented industry with telematics hardware. But the time granted between effective date and enforcement could have provided a good roadmap for OSRA-22's more technical requirements, especially because the ocean freight industry is similarly fragmented on the importer and drayage provider side of the equation.

Some of the uncertainty around compliance might clear up in the months ahead, with the US Federal Maritime Commission likely to serve as a good measuring stick through the complaints it investigates and rulings from the agency's Bureau of Enforcement, Investigations, and Compliance.

But even the best intentions may be impacted by resource constraints. With only one administrative law judge (ALJ) to make determinations on complaints at present, and a bigger pipeline of cases headed its way, the spirit of OSRA-22's demurrage ambitions may be hindered by physical realities, similar to a port constricted by too much container volume.

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