

**National Shipper Advisory Committee
Committee Meeting
Brenntag North America Conference Center
August 10, 2022
1:00-4:00 pm Central Time**

Meeting Minutes

Introduction and Determination of Quorum

Dylan Richmond, Designated Federal Officer (DFO), welcomed participants and thanked Brian Bumpass, NSAC Chair, and Brenntag North America, Inc., for hosting this and the subcommittee meetings from the prior day. He announced that alternate DFOs had been named for the committee, Jeremy Lutes and Jason Guthrie. After those remarks, he confirmed that a quorum of members was present and allowed the meeting to proceed.

Remarks from NSAC Leadership

Brian Bumpass, NSAC Chair, welcomed participants and addressed the FMC responses to the Committee's prior recommendations. He stated that the FMC agreed with the Committee's recommendation that dwell fees fall under the language of interpretive rule. Regarding the second recommendation, he noted the FMC also agreed of oversight on rail for containers with a through bill of lading.

Michael Symonanis, Vice Chair, thanked everyone for all their work since the last meeting.

Fees/Surcharges Subcommittee Discussion and Proposed Recommendations

Members reviewed a recommendation from the Fees & Surcharges subcommittee on Earliest Return Dates (ERDs). That recommendation had been published on the NSAC's webpage with the original Federal Register announcement. During the discussion, some members proposed additional language for review to be included in the recommendation. Members agreed to use the phrase "at time of motion" to describe the appropriate ERD used in the calculation, assessment, and billing of detention and demurrage to exporters. All changes and updates were reviewed and voted on by the Committee and are noted below (changes and additions are shown in bold).

1. **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**.
2. **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.**

3. 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.**
4. 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.**
5. **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.**
6. **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.**
7. 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.

The Committee took three votes on the above recommendations: the first on updated verbiage shown in points 1-3, the second on updated verbiage to shown in points 4-7. Once the updated language was included in the draft recommendation, the Committee voted to approve the recommendation as written. All votes were unanimously in favor.

Data/Visibility Subcommittee Discussion and Proposed Recommendations

The Data and Visibility subcommittee brought forward two recommendations for review by the full Committee. First, the group proposed a recommendation that the FMC establish a new National Ocean Carrier Advisory Committee, within 120 days. This proposed Committee was proposed in the FMC's Fact Finding 29 report. The Committee unanimously approved this recommendation.

Next, the Committee discussed a potential recommendation to request the FMC "to initiate rulemaking to establish a uniform cargo receiving window (CRW) timelines and cutoffs for all

vessels service alliances and sharing agreements – Early Return Date, and Dry, Refrigerated and Dangerous Goods (DG) Documentation and Physical Cargo Cutoff – for same vessel, vessel service and port of loading within ninety (90) days.”

One member asked if the goal of this recommendation were to provide guidance on exactly how carriers should make suggested changes to these cutoff windows, and whether this proposal would cover imports. Members of the subcommittee stated this proposal was not meant to provide exact guidance for carriers, and that the recommendation as drafted was only concerned with exports. Another member stated that the main purpose of the recommendation was an attempt to align ERD and the last return date among carriers on the same vessel.

A member then questioned whether additional time should be taken by the subcommittee to consider the importers’ points of view to avoid the need to propose an additional recommendation. Several members agreed with this view that the Committee represents importers and exports, and that their recommendations should reflect this. Another member asked whether this recommendation could be approved as is, and an amendment to this recommendation provided at a later meeting.

After the Committee concluded discussion on this item, they opened it up to members of the public for their comment. Siddharth Jairai of TVS Supply Chain Solutions, stated that import volume into the U.S. is bigger than exports, and this represents a big detention and demurrage issue for importers.

Ultimately, the Committee decided to table this recommendation for further discussion and did not vote on this item to send to the Commission for their consideration.

Other Discussion

The Committee Chair brought up the possible creation of a third subcommittee to discuss chassis and their impacts on shippers. A few members volunteered to serve on this subcommittee during the meeting. The Chair asked other members to email him, the Vice Chair, and the DFO of their interest in taking part in this subcommittee, so that it could get underway.

Summary of Written Comments from the Public

No written public comments were received.

Closing Remarks

Members discussed the next meeting of the Committee, and suggested December 8 in Washington, D.C. The DFO stated this date will need to be reviewed and confirmed by the Commission and that he would follow up with the Committee.

The Committee Vice Chair asked if the Committee could host outside members of private industry or other government agencies to discuss progress on similar recommendations coming

from other committees or give presentations on topics relevant to the discussions had by this Committee. The DFO stated this would be possible.

Adjournment

Once all items on the agenda had been discussed, the DFO adjourned the meeting.

Recommendation Voting Roll

Recommendation 1: Recommendation regarding regulations on Early Return Dates

Yes-18

Justin Cauley

Bob Connor

Chris Crutchfield

Tony DeBower

Rick DiMaio

Steven Hughes

Alexis Jacobson

Alison Leavitt

Peter Mento

Daniel Miller

Debb Minskey

Jennifer Morrissey

Adnan Qadri

Richard Roche

Gabriel Rodriguez

Steve Schult

Mike Symonanis, NSAC Vice Chair

Brian Bumpass, NSAC Chair

No-0

Recommendation 2: Recommendation regarding the initiation of an Ocean Carrier Advisory Committee

Yes-18

Justin Cauley

Bob Connor

Chris Crutchfield

Tony DeBower

Rick DiMaio

Steven Hughes

Alexis Jacobson

Alison Leavitt

Peter Mento

Daniel Miller

Debb Minskey

Jennifer Morrissey
Adnan Qadri
Richard Roche
Gabriel Rodriguez
Steve Schult
Mike Symonanis, NSAC Vice Chair
Brian Bumpass, NSAC Chair

No-0