

**National Shipper Advisory Committee
Committee Meeting
Washington, DC
May 11, 2023
1:00 pm Eastern Time
Minutes**

1:00 pm Introduction and Determination of Quorum

Dylan Richmond, the Designated Federal Officer (DFO), welcomed the Committee members and reminded everyone in attendance the activities of the National Shipper Advisory Committee (NSAC) are subject to the Federal Advisory Committee Act (FACA). The DFO thanked Walmart and its representative on the Committee for handling the logistics for the prior day's subcommittee meeting accommodations.

The DFO reminded those in attendance that this meeting is being livestreamed on the FMC's YouTube channel, and that antitrust laws apply to members of, and the discussions held by NSAC. Furthermore, NSAC members cannot speak for the Commission, the Federal Government, or the Committee itself outside of the public meetings. The structure of this meeting entails items brought forward for discussion and a vote by two subcommittees. The members were reminded that robust discussion should take place before a vote is held, and that one member must bring a motion to vote forward before the Committee, and that motion must be seconded by a different member. After these discussions and subsequent votes conclude, the meeting will be opened to comment by the public.

The DFO confirmed that a quorum of NSAC members is present.

1:05 pm Remarks from NSAC Leadership

The NSAC Chair, Michael Symonanis, thanked all the members for their attendance, the FMC staff for helping set up the meeting, and members of the public in attendance. He recognized the commitment of all members in continuing their work on the Committee. The Chair emphasized that he hopes the NSAC will successfully widen its engagement with the public, and that he wants the NSAC to focus on developing recommendations that are within the FMC's jurisdiction.

The Vice Chair, Kenneth O'Brien, acknowledged the difficulty and frustration, at times, of the work that has been done by the NSAC, but encouraged members to carry on and confirmed that progress is being made.

1:15 pm Data/Visibility Subcommittee Discussion

The Chair of the Data and Visibility subcommittee, Gabriel Rodriguez, provided a recap of their work since December 2022. Since that time, three recommendations have been developed and they are now beginning to meet with various industry organizations to gather feedback and to ensure alignment of recommendations with the industry's needs.

In their meeting with the Port of Long Beach, the terminal's supply chain information highway initiative – an open data warehouse for critical shipment and container data – was discussed as the subcommittee believes it could serve as a model for the recommendation coming out of Commissioner Bentzel's Maritime Transportation Data Initiative (MTDI). The subcommittee chair also mentioned that they may develop a future recommendation around chassis and equipment data visibility.

The subcommittee chair then brought their proposed recommendation forward for discussion by the full NSAC. This recommendation is focused on consistency and alignment of data and is intended to reduce the complexity and opacity of the supply chain by providing required standard data points, processes, and practices to be shared between ocean carriers, MTOs, and other supply chain partners. The exact verbiage of the recommendation can be found on the FMC's webpage for the NSAC. The floor was then opened for discussion on the recommendation.

One member asked how this recommendation has advanced since it was originally brought for consideration in the December 2022 meeting. The subcommittee chair explained the current recommendation synthesizes points from the prior data recommendations by focusing on how the supply chain network publishes data and ensures consistency therein, particularly for data held by and shared between MTOs and ocean carriers. It was acknowledged that every party to a shipping contract has their own data points and many parties have been trying to improve the way data is used and shared, but they have been operating in silos and it can be difficult for the NSAC alone to convince private parties to change their methods. The subcommittee hopes that this recommendation will help move the industry toward a better system. They also mentioned that ports or their terminal operators seem to be the most feasible party for attaining much of the data needed by shippers. It was noted that while many of the important data points are already available in one place or another the approaches used by different parties need to be harmonized.

The NSAC Chair reiterated that the measures can be taken in the short term to address this and other problems by focusing on behavioral issues. The data is there but lacks alignment and is shared too slowly, which comes at a cost. He called for additional feedback from other members of the shipping public to help the NSAC craft the best recommendation possible to address these problems and it to ensure it represents the interests of the entire industry.

Chris Crutchfield put forward a motion to vote on the recommendation in its current form, and the motion was seconded by Jen Morrissey. The vote was unanimously in favor of the recommendation.

2:00 pm Fees/Surcharges Subcommittee Discussion

The Chair of the Fees and Surcharges subcommittee, Rich Roche, stated that the work of the subcommittee has recently focused on detention and demurrage charges. He reiterated that while the necessity of such charges is understood it needs to be ensured these charges are actually used for their stated purpose of incentivizing cargo flows. The subcommittee chair then recovered the major points of interest from the FMC's Notice of Proposed Rulemaking (NPRM) on detention and demurrage charges, discussed in the last public meeting. He stated that the subcommittee focused on the true costs of holds, reimbursement to shippers for charges, and that

they support the 30/30/30 rule and hopes the FMC will take these into consideration in the NPRM.

The subcommittee chair then reviewed recent discussions between them, the FMC, and the Surface Transportation Board on issues related to jurisdiction of intermodal rail moves. According to the subcommittee chair, the FMC claims jurisdiction on through bills of lading but stated it does not have the ability to order railroads to change their behavior, as these entities are not regulated by the FMC. This is the grey area that the subcommittee has focused their recommendation. Since the last meeting, the subcommittee Chair noted that the National Customs Brokers and Forwarders Association of America (NCBFAA) has asked Congress to have the FMC change the invoice structure for rail storage billing, ensuring that bills for rail storage move from contractor to contractee, or between the rail operator and the ocean carrier in this case, which the subcommittee supports and believes is the proper way for these bills to be issued. The subcommittee also includes as part of its recommendation to alter language in the NPRM to ensure that rail storage fees are treated the same as demurrage.

According to the subcommittee chair, under the current wording of the NPRM on demurrage and detention billing practices, the FMC states that the contractual party should be billed, which in this case means the railroad. The subcommittee's current recommendation would request the language be updated to encompass any charges, including "*per diem charges*, assessed by or on behalf of ocean common carriers, marine terminal operators, or non-vessel operating common carriers related to the use of terminal space (e.g., land) or shipping containers, but not including freight charges." The subcommittee believes this recommendation will help reconcile the problem faster which will help the whole industry.

In concluding comments to the discussion, the NSAC Vice Chair, stated that some entity, whether it be the FMC, the STB, or some other agency has to take responsibility for this problem. Otherwise, any amount can be charged to shippers. He believes this recommendation is a great way to start the conversation.

Steve Hughes brought forward a motion to vote on the recommendation which was seconded by Gabriel Rodriguez. The vote was unanimously approved.

2:45 pm Public Comment Period

The DFO announced the floor was open for comments from the public and stated none had been received via email since the prior meeting.

Siva Narayanan, a member of National Industrial Transportation League (NITL) and Chair of their Ocean Committee, shared his agreement on making references to MTOs and rail terminals in the second recommendation heard in the meeting today. He expressed that he is pleased to hear that the NSAC members are seeking pragmatic solutions in their recommendations as business want pragmatic solutions and not just policies that cannot be acted upon. The situation today is not working, and his organization supports the proposition to require terminals (both MTO and rail) to bill the ocean carrier for demurrage. If they then pass on the charges to shippers, then the shippers will pay the carrier directly. If the shipper is not a party to the contract between rail and the carrier, then the railroads should be working with the carriers to

resolve these issues. He noted that if the industry does not simplify the issue, then they cannot grow the U.S. economy.

Buddy Allen of the Cotton Shippers Association, commended members of the NSAC for their diligence and shared his organization's agreement with all the proposals members have put together. He told members that his organization is working to ensure policymakers are aware of the recommendations and the value of the NSAC's recommendations.

Jim Shapiro, Thunderbolt Logistics, told the NSAC members that their work is greatly needed. He related an issue his company has had in relation to the NSAC's discussion on customs holds. His company has faced difficulty after it imported solar panels from Vietnam, and the three containers their material was shipped in have been stuck on hold since December 2022 all the while accruing port dwell and demurrage fees which now total six figures. He argued the price these fees incur are unreasonable relative to the value of the cargo.

Nancy O'Liddy, Executive Director of the NITL, notified NSAC committee member that ports are switching hours on their truckers regularly. She stated that this practice is unfair, and the truckers cannot handle the constant change. She also notified the NSAC members that her organization is working with a coalition to write a letter to ports to discuss these issues – which she described as a blatant attack on shippers.

2:55 pm Closing Remarks

In closing remarks, the NSAC Vice Chair emphasized that now is the time for the NSAC to double their efforts since the attention of the nation is on the supply chain and people want to improve the system. It is important as shippers to ensure we provide our feedback and ensure it is heard so problems faced at the terminal can be addressed. He also underscored that the NSAC represents the industry, which includes ocean carriers. Though shippers and ocean carriers do not always agree the dialogue between parties needs to remain open.

The NSAC Chair stated when considering the current rules and ongoing rulemakings everything goes back to determining what is reasonable and unreasonable. Ultimately, cargo entities bear responsibility to ensure issues are addressed and the members of the NSAC, as members of the shipping public, have thus far been focused on the issues that have had the largest impact on their businesses over the last few years. However, many of these are legacy issues that will persist until they are effectively resolved. He underscored that members of the NSAC are responsible for determining the way forward and in the absence of feedback from other members of the shipping public it will determine the best way forward, though he maintained that the NSAC will continue to reach out to other stakeholders for constructive dialogue on the issues facing the industry. The endgame is to ensure improved operations within the system.

3:00 pm Conclusion

The DFO confirmed all matters before the committee had concluded and the meeting is adjourned.

Recommendation Voting Roll

Recommendation 1: Consistency and Alignment of Data

Bob	Connor	Yes
Chris	Crutchfield	Yes
Tony	DeBower	Yes
Sean	Healy	Yes
Steven	Hughes	Yes
Morgan	Jackson	Yes
Alexis	Jacobson	Yes
Fernando	Lagonell	Yes
Alison	Leavitt	Yes
Debb	Minsky	Yes
Jennifer	Morrissey	Yes
Kenneth	O'Brien	Yes
Adnan	Qadri	Yes
Richard	Roche	Yes
Gabriel	Rodriguez	Yes
Mike	Symonanis	Yes

Recommendation 2: Comment for NPRM on Demurrage and Detention Billing Practices

Bob	Connor	Yes
Chris	Crutchfield	Yes
Tony	DeBower	Yes
Sean	Healy	Yes
Steven	Hughes	Yes
Morgan	Jackson	Yes
Alexis	Jacobson	Yes
Fernando	Lagonell	Yes
Alison	Leavitt	Yes
Debb	Minsky	Yes
Jennifer	Morrissey	Yes
Kenneth	O'Brien	Yes
Adnan	Qadri	Yes
Richard	Roche	Yes
Gabriel	Rodriguez	Yes
Mike	Symonanis	Yes