

**National Shipper Advisory Committee
Committee Meeting
Miami, Florida
March 30, 2023
1:00 pm Eastern Time**

Meeting Minutes

Introduction and Determination of Quorum

Dylan Richmond, the Designated Federal Officer (DFO), welcomed everyone in attendance, advised the meeting is subject to Federal Advisory Committee Act (FACA) requirements, and confirmed a quorum was present and the National Shipper Advisory Committee (NSAC or Committee) could conduct its business.

Committee members were reminded they cannot individually speak for the Committee or on its behalf.

Election of NSAC Chair and Vice Chair

The DFO announced that the first item on the agenda was the Committee's election of a new Committee Chair and Vice Chair. underscored the FMC's desire for the Committee to reflect a balance between importers and exporters. Ballots for the two open positions were sent out to Committee members via email prior to the meeting. Committee members then returned their ballots directly to the DFO. The DFO asked if any Committee member would like to change their vote prior to reading the outcome. No Committee members motioned to change their vote. The DFO then confirmed Michael Symonanis was elected to the position of Committee Chair, and Kenneth O'Brien was elected to Vice Chair.

Remarks from NSAC Leadership

The NSAC Chair thanked the Miami-Dade Council for hosting the meeting and the Committee members for their work in the subcommittees since the last full meeting. The Vice Chair encouraged members of the public to engage with the Committee to ensure their side of the story is heard and that any recommendations put forth by the Committee address the needs of the whole supply chain.

Update from Commissioner Carl Bentzel (Virtual)

Federal Maritime Commissioner Carl Bentzel provided an update to the Committee on his Maritime Transportation Data Initiative (MTDI). He stated he is awaiting final comments from FMC staff and other commissioners before publishing his final report. Commissioner Bentzel also expressed his desire for the public to provide comments on the recommendations from the report. The main recommendation from the report would be the establishment of a maritime transportation data system which would house several mandatory data elements vital to running an efficient supply chain. He expressed his continued support for engaging with the Data and Visibility subcommittee as his work is ongoing.

Commissioner Bentzel discussed his conversations with the European Commission, the Digital Container Shipping Association (DCSA), and officials from the ports of Antwerp and Rotterdam as part of his research for the MTDI report. He shared that the European Commission is working on an inter-port interface which will focus on ships coming into port. According to him, European ports are struggling with inaccurate and untimely data. He has also discussed the potential benefits of track and trace technology for international intermodal cargo with DCSA.

Following Commissioner Bentzel's remarks, he took questions and comments from Committee members. The NSAC Chair asked about Commissioner Bentzel's impressions on the scope and progress of Europe's work so far. Commissioner Bentzel said he believes the U.S. is likely the first mover in tackling the complex problems facing both importers and exporters. Europe has no strategy in place yet to enact their plan, and their plan is limited to handling ships when they first enter the port.

Data/Visibility Subcommittee Discussion

The Data/Visibility Subcommittee Chair, Gabriel Rodriguez, provided an update on their work since the last meeting. He stated the group meets on a bi-weekly basis and worked on developing the three recommendations proposed at the last meeting. The group is developing another recommendation aligning carrier and subcontracted party (e.g., MTOs, railyards, etc.) data. That potential recommendation will be informed by the MTDI final report, so the subcommittee held off on moving forward until the report was released.

The subcommittee chair also recommended that the Committee move from a data gathering stance to more engagement with the public, inviting industry partners and organizations to engage with the Committee and the subcommittee, and asked for general feedback on the NSAC recommendations that had been passed.

The NSAC Chair commented on the subcommittee's work going forward. He mentioned that their first goal is to clarify recommendations through creation of summaries for broader distribution. This will aid the NSAC as it works to widen engagement with the nation's shipping community and ensure its recommendations reflect the needs of the entire shipping public. Feedback from shippers could help the NSAC determine its next steps. The NSAC Chair reiterated that some of the issues with the supply chain are behavioral and, thus, can be addressed immediately and without requiring legislative or regulatory changes.

Following this discussion, the subcommittee chair solicited comments and questions from Committee members. One member asked whether members of the Data/Visibility Subcommittee would be willing to attend public events held by various groups and associations around the shipping community to solicit feedback on their work, rather than waiting for the public to reach out to NSAC. NSAC leadership would take this into consideration.

Fees/Surcharges Subcommittee Discussion

The Fees and Surcharges Subcommittee Chair, Rich Roche, provided a recap of their Q1 2023 efforts. He reiterated that the subcommittee supports reasonable detention and demurrage

practices – i.e., incentivizing the movement of cargo – and only wants to correct the abuses of these charges.

The subcommittee chair discussed the ongoing FMC rulemaking and asked the NSAC to come together to provide formal comments as a group to the FMC to ensure their voices are heard and the final rule best reflects the needs of shippers. The Committee's comments, he suggested, should focus on early return date changes, customs holds, detention billing (who should be sending or receiving the bill), amended D&D invoicing (to ensure the 13 elements outlined in OSRA 2022 are included), and the “30/30/30” idea for billing and disputed charges for D&D (30 days to invoice, 30 days to dispute, and 30 days to resolve). He noted the first two items are already covered by previous recommendations from that subcommittee.

The subcommittee chair reviewed their work on attempting to clarify jurisdictional issues on through bills of lading. In the FMC's response to its “Intermodal Oversight via Through Bills of Lading” recommendation from April 2022, the FMC stated any expansion of the agency's jurisdiction must be legislated by Congress. The FMC's response did note that the Commission has jurisdiction on a “through transportation rate”. Despite this, the subcommittee feels the FMC's recent actions do not support these statements. A major problem noted by the subcommittees is that railroads, which are not FMC-regulated entities, issue bills as well. At the recommendation of Commissioner Rebecca Dye, the subcommittee met with Surface Transportation Board (STB) Member Patrick J. Fuchs for another viewpoint on this issue. That Board member stated that the Staggers Act denies the STB jurisdiction over contract carriage.

The subcommittee chair listed a few possible next steps to move forward: 1) Follow the warehouseman's case and ask Secretary of Transportation to have STB commence investigation. 2) Ask Congress to increase FMC's jurisdiction. 3) Ask for rulemaking to have railroad operators invoice ocean carriers for storage directly.

Following the update, the subcommittee chair solicited comments and questions from Committee members. One member asked if the group could move forward with the third idea without doing the second first. The subcommittee chair stated it is the subcommittee's belief that they could if the FMC adds language in their current D&D rulemaking mandating that rail operators must bill the ocean carriers. Other members reiterated the importance of identifying where the FMC's jurisdiction ends and any gray areas. The NSAC Vice Chair supported answering the NPRM and identified a fourth possible solution – working with the railroads directly to resolve the issues. He posited this might be a faster route to resolution. There was general support for the idea the incentive principle should be leaned on to cover these problems, but it was acknowledged there is no referee in the game.

Chassis Subcommittee Discussion

The Chassis Subcommittee Chair, Steve Schult, provided a brief update due to limited engagement since the last meeting. The subcommittee is waiting for ongoing litigation to be resolved as that will impact their work. In the meantime, the group is working to understand more holistically what chassis fairness looks like given the variance in chassis models at ports and regions around the country. The group plans to meet with several Class 1 railroads to

determine the chassis impact is on inland moves and should have more information to share by the next full NSAC meeting.

Public Comment Period (commenters limited to 3 minutes each)

The DFO notified the Committee that no public comments had been received via email and encouraged the public to provide such comments at nsac@fmc.gov. In-person attendees were then allowed to address the Committee.

Summation of Comments

Eric Olafson, Director of Global Trade and Cargo Development PortMiami

Mr. Olafson stated he believes the NSAC and PortMiami share common goals and problems. Since ports are a critical delivery point, he stated better transparency is needed to know how much cargo to put on rail or truck, and what is moving to inland ports. This is an important consideration for PortMiami as they work to build two inland ports. A considerable amount of their cargo is perishable – the port has seen a 58% increase in this category since 2018 – and it loses value quickly if cargo is not moving efficiently. Accurate and timely information on cargo is critical for the PortMiami.

He stated that we want to be able to see cargo at 360 degrees as it moves throughout the U.S. Right now, it is possible to find where your container is located, but it takes you twenty websites to find all the information. He offered his organization to be a resource for the Committee.

Brian Bumpass, Vice President of Logistics at The Allied Group

Mr. Bumpass stated that rail demurrage is a huge issue that shippers face and one that should be relatively easy to fix. However, because neither the STB nor the FMC have firmly accepted responsibility for these moves it causes confusion in the industry. Since the FMC accepts jurisdiction over through bills of lading, and demurrage bills from railroads refer to this bill of lading vis-à-vis the container numbers included on the invoices, he believes it should fall to the FMC to resolve this problem. Mr. Bumpass asked what the FMC is doing to tackle this problem, what is the timeline for resolution, and whether there is a path for the FMC to ask Congress to have their jurisdiction expanded.

John Dom, Member of Freight Transportation Advisory Committee and Chair of Florida Trade Advisory Committee

Mr. Dom stated that everyone is looking closely at intermodal ports and recommended to the NSAC they connect with departments of transportation of various states and use them as a resource in the NSAC's work. Many of the state DOTs are actively looking at the problems NSAC is discussing. One idea that may be of benefit to the industry, he shared, would be funds provided by the federal government for truck parking.

Closing Remarks

In closing comments, NSAC Chair Mike Symonanis underscored the challenge from a lack of feedback from the nation's shippers which is vital to these conversations. He noted that the NSAC would benefit from engagement with a wide variety of shippers and that the Committee cannot move forward unless there is agreement that the recommendations represent all shippers. This feedback will help the NSAC avoid redundancy in what have been technical recommendations thus far. The NSAC is open to making modifications and wants to reach a consensus among the nation's shippers. When this is done, the group can start to think about what behavioral changes, which do not require legislative or regulatory change, could be implemented immediately.

He believes that within the NSAC there is good representation between importers and exporters; and big, medium, and small organizations. He reiterated his belief that the group should work to identify behavioral and structural changes that will benefit all shippers.

NSAC Vice Chair Kenneth O'Brien thanked all Committee members for volunteering their time to the Committee's work and their work is meaningful. The system will not change on its own, and the NSAC needs to do this work to effect change. The solutions the Committee develops must be fair and right for everyone.

Adjournment

Following the closing remarks from NSAC leadership, the DFO stated that all agenda items had been covered and adjourned the meeting.