

April 14, 2020

*Via e-mail (Secretary@fmc.gov)*

Ms. Rachel E. Dickon  
Secretary  
Federal Maritime Commission  
800 N. Capitol St., N.W.  
Washington, D.C. 20036

Re: Docket No. 20-02, NITL Comments on Proposed Service Contract Regulations

Dear Secretary Dickon:

The National Industrial Transportation League (“NITL” or “League”) hereby submits its Comments in response to the Federal Maritime Commission’s (“FMC” or the “Commission”) Notice of Proposed Rulemaking to amend its regulations governing Service Contracts.<sup>1</sup> This NPRM follows the Commission’s order denying in part and granting in part the World Shipping Council’s (“WSC”) petition for exemptions from certain service contract requirements. Specifically, in its order the Commission determined to exempt ocean carriers from the requirement to publish a statement of service contract essential-terms in their tariffs but not to exempt them from filing service contracts confidentially with the Commission.<sup>2</sup> This rulemaking is needed to implement the Commission’s findings in the order.

The League strongly supports the Commission’s proposal. The League echoes the Commission’s assessment that “the publication of Statements of Essential Terms corresponding to individual service contracts is of questionable value”<sup>3</sup> and believes that the proposed amendments would benefit the ocean transportation system by eliminating unnecessary and costly regulatory burdens on ocean carriers and the Commission itself to the extent the agency no longer must enforce this requirement.

Founded in 1907, the League is a national organization of shippers and other companies engaged in freight transportation throughout the United States and around the globe. Many League

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<sup>1</sup> Notice of Proposed Rulemaking, 85 Fed. Reg. 85,27 (February 14, 2020) (“NPRM”).

<sup>2</sup> *Pet’n of the World Shipping Council for an Exemption from Certain Provisions of the Shipping Act of 1984, as amended, and for a Rulemaking Proceeding*, Pet. No. P3-18, slip op., (FMC Dec. 20, 2019) (“P3-18 Order”).

<sup>3</sup> NPRM at 8528.

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members are importers and exporters that use the services of vessel operating common carriers (“VOCCs”). The League was at the forefront of the efforts to adopt the Ocean Shipping Reform Act of 1998 (“OSRA”) and has historically supported regulatory reforms that foster a competitive and efficient ocean transportation system while also reducing unnecessary regulation. The League also submitted comments in support of the WSC’s petition seeking exemptions from the service contract filing and essential-terms publication requirements set forth in 46 U.S.C 40502.<sup>4</sup> Accordingly, the League has a substantial interest in this proceeding.

The Shipping Act of 1984, as amended by OSRA, requires ocean common carriers to file service contracts confidentially with the FMC and publish and make available to the public “a concise statement of the essential-terms” of a service contract.<sup>5</sup> These terms are identified in the statute as (i) the origin and destination port ranges, (ii) the commodities involved, (iii) the minimum volume or portion, and (iv) the duration.<sup>6</sup> In parallel with the statute, the Commission’s current regulations require ocean common carriers to publish these essential-terms “contemporaneously with the filing of each service contract with the Commission” in a tariff format.<sup>7</sup>

The Commission proposes to replace the publication requirement with a requirement that “carriers publish general service contract rules and notices as a separate part of the individual carrier’s automated tariff system.”<sup>8</sup> The Commission explained that many ocean carriers currently publish “a ‘blanket’ rule or notice in the carrier’s ET tariff that applies to most, or all, service contracts” that such rules “are rarely amended once initially published.”<sup>9</sup> Thus, imposing this requirement will not create new substantial regulatory burdens but will simply implement a current practice followed by most ocean carriers.

The League strongly supports the Commission’s proposal. The League believes that the current essential-terms publication requirements impose significant regulatory costs and burdens on ocean carriers, without providing any meaningful benefit to shippers that outweigh such costs. League members have reported that they do not rely on essential-terms publications when contracting for ocean transportation services. Furthermore, as explained in the League’s comments filed in support of the WSC’s petition, a significant number of service contracts and amendments are filed with the Commission each year.<sup>10</sup> For example, the Commission received

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<sup>4</sup> Comments of the National Industrial Transportation League, Pet. No. P3-18 (November 19, 2018) (“NITL Comments”).

<sup>5</sup> 46 U.S.C. § 40502(d).

<sup>6</sup> *Id.* See also, 46 U.S.C. § 40502(c).

<sup>7</sup> 46 C.F.R. § 530.12.

<sup>8</sup> NPRM at 8528.

<sup>9</sup> *Id.*

<sup>10</sup> NITL Comments at 2.

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more than 800,000 filings of service contracts and amendments in FY 2019.<sup>11</sup> This number is approximately the same for the FY 2018. In the absence of any meaningful benefit for shippers, publication of essential-terms for each of these filings is an unnecessary burden on the ocean carriers. Furthermore, the Commission estimates that removing the essential-terms publication requirement will eliminate 41,048 manhours generating savings of \$1,987,133 per year for the industry. Thus, the League believes that the proposed amendments to eliminate the publication of statement of essential-terms requirement for ocean carriers will significantly reduce administrative burdens which will benefit all industry stakeholders.

For the foregoing reasons, the League strongly supports the Commission's proposals to amend its regulations governing essential-terms publication requirements. Accordingly, the League respectfully requests the Commission to issue a final rule as proposed in the NPRM.

Sincerely,



Karyn A. Booth

*Attorney for the National Industrial Transportation League*

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<sup>11</sup> Federal Maritime Commission 58th Annual Report for FY 2019 at 19.