



THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE

July 20, 2023

Federal Maritime Commission
Secretary William Cody
800 N. Capitol Street NW
Washington, D.C. 20573
Transmitted via email to secretary@fmc.gov

RE: Notice of Request for Additional Information, 88 Fed. Reg. 42,941, Agreement No. 201349-003, FMC Doc. No. 2023-14134

Dear Secretary Cody:

The National Industrial Transportation League (“NITL”) hereby submits its comments in response to the notice of request for additional information issued by the Federal Maritime Commission (“FMC” or “Commission”) on July 5, 2023.¹ The Commission’s notice seeks comments from interested parties regarding an Amendment to the World Shipping Council Agreement, FMC Agreement No. 201349, that would authorize the ocean carrier parties to the Agreement to coordinate the development of cargo screening and inspection processes and tools for hazardous materials shipments. Although NITL supports the Amendment’s purpose to improve safety compliance for such shipments, it is concerned that the Amendment lacks sufficient transparency as to its implementation and impacts, and could result in shipment delays and an opportunity to discriminate against shippers of hazardous materials.

Founded in 1907, NITL is one of the oldest national associations representing companies that ship and receive goods, or are involved in transportation, in both domestic and international commerce. Its members range from some of the largest users of the nation’s transportation system to smaller companies engaged in the shipment and receipt of goods, as well as third-party intermediaries, logistics companies, and other entities involved in the transportation of goods, including hazardous materials. Safe and efficient ocean transportation is a vital interest to NITL members, and NITL supports the stated purpose of the Amendment to reduce the safety risks to crews, vessels, and the marine environment, in the transportation of hazardous materials as a result of undeclared or non-compliant dangerous goods. NITL submits these comments as a party with a strong interest in the implementation of ocean carrier initiatives that promote safety compliance without imposing unreasonable burdens on ocean carriage of hazardous materials.

The Amendment seeks to reduce the safety risks posed by the ocean carriage of undeclared or otherwise non-compliant hazardous materials. To achieve this, the Amendment would permit

¹ Notice of Request for Additional Information, 88 Fed. Reg. 42,941 (July 5, 2023).

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parties to Agreement No. 201349 to, among other things, create a digital tool to screen cargo and create and maintain a database of shippers and cargo inspection companies that conform with minimum safety standards in the shipment of hazardous materials.²

During the unprecedented demand during the pandemic, shippers of hazardous materials encountered significant challenges when securing vessel space. Indeed, central to the Ocean Shipping Reform Act of 2022 was ensuring ocean carriers cannot discriminate against “any commodity group or type of shipment”, such as hazardous materials.³ Congress also directed the Government Accountability Office to review potential discrimination by ocean common carriers against maritime transport of qualified hazardous materials.⁴

NITL’s greatest concern with the Amendment is the intent for the WSC Agreement’s members to discuss and coordinate the establishment of “databases of shippers...that demonstrate conformance with such minimum safety criteria as may be established and/or revised by the Parties and other members of WSC from time to time...” Hazardous materials shippers already must comply with extensive IMDG Code safety standards and requirements and it is unclear if the Amendment is intended to lead to the establishment of new standards above and beyond those that are globally recognized. Additionally, there are many unanswered questions regarding the purpose and use of the database: What are the ramifications for those shippers of hazardous materials who are included in the database, and for those who are not? If a shipper meets IMDG Code standards but fails to meet the WSC Agreement standards will that shipper be excluded from the database and denied vessel space? Will their shipments be scrutinized and subjected to inspections and delays? Who will conduct the inspections? Will the inspections include opening containers which introduces other safety and cargo damage risks?

These and many other unanswered questions, as well as the lack of transparency over the minimum standards to be developed by the carriers, leads to NITL’s concern that the Amendment could create an opportunity for ocean carriers to discriminate against shippers of hazardous materials. To that end, NITL believes it is imperative that the new standards, processes, and tools to be developed under the Amendment regarding the shipment of hazardous materials not be implemented in a manner that could lead to delays, supply chain disruption, and discrimination. In this regard, NITL commends the Commission for requesting additional information regarding the Amendment which has delayed its implementation to allow for additional analysis and scrutiny.

² Federal Maritime Commission, Synopsis of World Council Agreement, *available at* <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/34503> (last visited July 17, 2023).

³ Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, § 22, 136 Stat. 1272, 1284 (2022), *see* 46 U.S.C. § 41104(a)(16).

⁴ *Id.* at Sec. 22.



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Further, the Amendment seeks authority to establish and administer directly or through third parties a common digital solutions tool for cargo screenings, using cargo booking data and documentation. Like the creation of a shipper database(s), questions exist as to the need for ocean carriers to jointly establish such a tool, how the tool will be implemented to address hazmat compliance, and whether there will be adverse consequences as a result of the new screenings. To be clear, NITL does not support shippers that mis-declare hazmat shipments or fail to comply with safety regulations. Rather, NITL is concerned that the Amendment could result in shipment delays, disruption, and reduced efficiencies for hazmat shippers notwithstanding the shippers' compliance with existing safety regulations.

In sum, NITL applauds the Commission for requesting more information and asks the agency to scrutinize the Amendment's implementation and anticipated impacts. This is necessary to ensure any coordinated cargo screening and inspection processes and tools would not unduly burden or discriminate against hazardous materials or the entities that ship such commodities.

Sincerely,

E. Nancy O'Liddy

Executive Director, The National Industrial Transportation League