



THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE

The National Industrial Transportation League
Federal Maritime Commission Transition Issues
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Introduction-The National Industrial Transportation League (League) is the nation's oldest and largest association of companies engaged in freight transportation. The League has over 700 member companies ranging from some of the largest in the nation to small and medium size enterprises. They primarily include companies that move their products through our country's transportation networks and are engaged in the movement of goods both domestically and internationally. These members ship their products via all modes of transportation, including ocean transport. Therefore our members are greatly affected by the programs, policies and positions of the U.S. Federal Maritime Commission (FMC) as most of our members are customers of liner carriers currently regulated by the agency.

Liner Antitrust Immunity- The reforms brought about by the *Ocean Shipping Reform Act of 1998* (OSRA) most significantly confidential contracting between carriers and shippers have resulted in considerable benefits for both carriers and shippers and have improved relations between them as well. But business practices in the liner industry have changed in the ten years since OSRA came into effect. Liner carriers today still engage in collective discussions (through discussion agreements and conferences) of supply and demand and still establish freight rates and surcharges on a collective basis rather than setting rates on individual costs as other industries must do.

Continuation of liner antitrust immunity has resulted in a regulatory scheme that requires oversight and monitoring of collective-based actions, at a significant cost to tax payers. Antitrust immunity which at one time made sense to protect U.S. based companies, is now serving only to protect foreign based carriers that serve U.S. markets. Contract filings with the agency and tariff publication enforcement results in significant administrative costs without any redeeming benefits. There is no reason to continue this extraordinary privilege or the agency's role in preserving their exemption from market forces.

FMC Administration- If antitrust immunity were largely eliminated for liner carriers (antitrust scrutiny left to DOJ) under the Shipping Act, the agency's duties could be greatly reduced to dealing with policies and adjudicating issues among other constituents such as ports and intermediaries. Additionally with the Commission's experience, it could retain oversight over government controlled carriers as well as miscellaneous shipping practices.

As with its domestic counterpart the Surface Transportation Board (STB), the FMC may operate more efficiently under the Department of Transportation with a reduction to three commissioners. Another possibility would be to retain five commissioners and combine them with the STB (a "surf and turf" board) or a Freight Transportation Board (Commission).

Commissioner Qualifications- Individuals named and confirmed to the FMC should have at a minimum, a practical and informed understanding of this industry. While the maritime industry shares many qualities with other industries, in many respects it has unique characteristics which require specific insights. This experience may come from having worked in, with or for the industry.

Another qualification should be a working understanding of the laws and regulations which govern the maritime industry. Knowledge of the legislative and executive branches of government would be valuable in understanding the parameters of the Commission's authority and to what extent initiatives could be pursued without resorting to expensive and lengthy legislative solutions.

