Comments of the
World Shipping Council

Submitted to the
Federal Maritime Commission
In the matter of

Comments on
FMC Initial Draft Strategic Plan
for FY 2014-2018

August 26, 2013
The World Shipping Council (WSC) respectfully submits these comments in response to the Commission’s July 30, 2013 invitation for public comment on its Initial Draft Strategic Plan for Fiscal years 2014-2018 (NR 13-10).

On February 13, 2013, the FMC voted unanimously to proceed with a review of service contract filing regulations during 2013 as a way to implement the President’s Executive Order 13563 and to make the agency’s regulatory programs less burdensome. As noted at that February 13 meeting, the agency had received suggestions from industry representatives regarding how to achieve this objective.

The Draft Strategic Plan for FY 2014-2018 makes no mention of this February decision by the Commission to consider reducing the regulatory burdens that arise from service contract and contract amendment filing. As the agency has not yet published any proposed action to implement such possible regulatory relief, any such Commission action will by necessity occur in FY 2014.

We recommend that the Draft Strategic Plan be amended to include a description of the process that the agency intends to follow to implement the regulatory relief that it agreed to undertake in February.

For the information and convenience of the Commission, the attached Appendix sets forth a description of regulatory relief from service contract amendment filing that WSC believes would implement the objectives of the President’s order, while not impairing the agency’s ability to monitor trade conditions or ensure compliance with the Shipping Act and without in any way adversely affecting the interests of shippers. WSC believes that these changes could be easily accomplished with a minimum of controversy and change to the contract filing system, but would provide needed regulatory relief to shippers and carriers alike.

WSC thanks the Commission for its consideration of these comments.
Appendix

Recommended Changes to Existing Service Contract
Filing Requirements to Reduce
Unnecessary Regulatory Burdens on U.S. Ocean Carriage

While some may question what value or benefit arises from the requirement that ocean carriers file their service contracts with the FMC, the Commission has within its discretion the ability to reduce unnecessary service contract regulatory burdens on the industry without going so far as eliminating the practice of contract filing. The FMC could provide significant and very helpful regulatory relief by changing the current requirement that contract amendments be filed before the carrier receives the cargo to be transported under the amendment and before the carrier can carry the cargo. This contract amendment filing regulation serves no important purpose, is burdensome, frustrates shipper-carrier agreement, and should be changed to allow retroactive filing of contract amendments.

The May 2012 recommendations, filed with the FMC by ocean carrier rate discussion agreements, focus on three issues relating to contract filing requirements: the filing of contract amendments; contract correction requests; and expanding the current list of exempt commodities for which no filing is required.

**Contract amendments:** In 2010 45,342 service contracts and 350,310 contract amendments were filed with the FMC. Similar numbers have occurred in subsequent years. These present comments do not propose any change to the requirement that service contracts be filed with the FMC as they are today, but do propose that amendments to contracts should be allowed to be implemented immediately without a requirement that they be filed before they are effective. The contract amendments could be filed within a specified time from the date of the agreement to the contract amendment or the receipt of the cargo for movement under the amendment. We would recommend that such a period be at least 30 days, or perhaps 90 days, from the time of the amendment agreement or receipt of the cargo, so that carriers could file contract amendments on a monthly or preferably a quarterly basis.

This proposal would not change the number of contracts or contract amendments that must be filed with the FMC (roughly 400,000 per year), but would allow carriers the flexibility to file their contract amendments on a more flexible, periodic basis. It would also allow carriers and shippers to implement their contract amendments without having to wait for compliance with the current regulatory requirement that serves no significant beneficial purpose.
**Contract correction requests**: These comments also restate the May 2012 ocean carrier agreement proposal that the FMC adopt six different measures to reduce current regulatory restrictions applicable to amending service contracts, including: 1) providing a limited “grace period” to correct typographical or clerical errors, 2) extending the time period within which a correction request may be filed from 45 to 180 days; 3) amending procedures to allow correction of the effective date of a contract or amendment that is not timely filed due to error; 4) permitting a contract amendment when the other party refuses to concur even though it agreed to the amendment; 5) eliminating the need for a supporting affidavit; and 6) reducing the filing fee applicable to contract correction requests.

**Expand the list of exempt commodities**: Currently, there are several commodities classified as “exempt commodities” for which service contracts do not need to be filed: forest products, recycled metal scrap, new assembled motor vehicles, and waste paper. The May 2012 carrier rate discussion agreements’ comments propose expanding the list of exempt commodities to include: agricultural products that can be moved in bulk or by tramp vessel (i.e., grain, soybeans, meal, flour, corn products, animal feed, seeds and food additives), clay, hay, hides, and plastic scrap.

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These proposals would provide greater flexibility and regulatory relief to carriers with respect to existing requirements applicable to service contract amendment filing. These proposals do not propose changing the existing regulatory principle that ocean carrier service contracts and service contract amendments for non-exempt commodities should be filed with the FMC, but do in particular propose to adjust the timing of the filing of contract amendments. This would provide much needed relief from the costs and restrictions of current amendment filing requirements, while doing no harm to the regulatory regime. WSC recommends that the Commission publish a Notice of Proposed Rulemaking proposing such regulatory relief in early FY 2014.