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Thomas A. Allegretti  
President & CEO

July 5, 2017

Rachel E. Dickon  
Assistant Secretary  
Federal Maritime Commission  
800 N. Capitol Street NW, Suite 1046  
Washington, DC 20573

Re: Docket No. 17-04, Regulatory  
Reform Initiative

Dear Secretary Dickon:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf Coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

On behalf of AWO's member companies, thank you for the opportunity to provide input on existing Federal Maritime Commission regulations that should be repealed or revised in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda." We applaud the Trump Administration for initiating this effort to alleviate regulatory burdens and seeking feedback from the public to assist the FMC in evaluating its regulations.

AWO has repeatedly registered our concerns with the FMC's interpretation and enforcement of Section 41105(4) of the Shipping Act of 1984, which prohibits groups of ocean carriers from collectively negotiating with non-ocean carriers "on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part [...]". Despite this prohibition, international ocean carrier alliances have sought the authority to collectively negotiate with U.S. harbor service providers in five agreements filed with the FMC over the past year. In three of these cases, the proposed provisions were later withdrawn by the alliances, but in January 2017, the FMC permitted an amended agreement filed by a group

of foreign roll-on/roll-off operators to take effect that gives the group the ability to jointly negotiate with domestic tugboat operators. FMC Commissioners have asserted that any resulting agreements – in other words, contracts negotiated by the ro/ro group for tug services – must be filed with the FMC for review to ensure there is no anticompetitive effect.

In the spirit of reducing regulatory burdens, AWO reiterates – as we have argued in previous submissions to the Commission – that FMC review of tug service contracts is an inappropriate extension of the FMC’s regulatory authority that Congress neither condoned nor contemplated when it passed the Shipping Act. We also reassert that seeking to nullify a contract that is found to violate the antitrust laws after it has been negotiated is much more complex and problematic than simply prohibiting the collective negotiation that facilitates anticompetitive behavior in the first place. We have consistently maintained that the FMC should reject any agreement that gives foreign ocean carriers an advantaged bargaining position over domestic harbor services companies that have no counterbalancing ability to take collective action. If the FMC Commissioners believe that the Shipping Act prevents them from protecting U.S. third-party service providers from the dangers posed by increasing consolidation and projection of market power by international ocean carrier alliances, this suggests that the statute is outdated and should be amended to establish an unequivocal prohibition on collective negotiation by alliances with domestic tugboat operators. In the absence of a statutory change, the FMC should support the Administration’s regulatory reform agenda by rejecting provisions in future alliance agreements that permit collective negotiation with harbor service providers to prevent an inappropriate expansion of the FMC’s regulatory oversight to contracts with American harbor service providers.

The FMC could further alleviate regulatory burdens on American businesses by ensuring that the public has adequate time to review and comment on ocean carrier alliance agreements filed with the Commission. As we have discussed, the specific terms of alliance agreements may have crucial implications for domestic tugboat operators. However, the interested public has been provided with as few as 12 days to review and respond to recent notices of filed agreements. AWO recommends a modification of 46 CFR §535.602(6) to establish a reasonable minimum period of 30 days for the submission of comments regarding filed agreements.

The FMC should also provide for greater transparency in the Commission’s decision-making process. Under Section 41307(b)(1) of the Shipping Act, the FMC must determine that filed agreements will not, by a reduction in competition, produce unreasonable reductions in service or increases in cost. These determinations may have significant impacts on American businesses and jobs, but the information on which they are based is currently completely opaque. AWO recommends that the FMC make the staff market analysis and competition review on which the Commissioners base such determinations reasonably available to the public. Making the so-called 6(g) analysis public would allow those who are impacted the opportunity to understand, and if appropriate, contest, the Commission’s rationale.

Thank you again for the opportunity to comment on the FMC's evaluation of regulations that may be appropriate for repeal, replacement or modification. We would be pleased to answer any questions or provide further information as the FMC sees fit.

Sincerely,

A handwritten signature in black ink that reads "Tom Allegretti". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas A. Allegretti  
President & CEO