

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION
46 CFR 535 - OCEAN COMMON CARRIER
AND MARINE TERMINAL OPERATOR AGREEMENTS
SUBJECT TO THE SHIPPING ACT OF 1984**

Part A - Justification

1. The Shipping Act of 1984, 46 U.S.C. § 40101 et seq. (2006) (the "Shipping Act"), identifies certain commercial agreements by or among ocean common carriers that fall within the jurisdiction of that Act. Section 5 of the Shipping Act, 46 U.S.C. § 40302, requires that carriers file those agreements with the Federal Maritime Commission. Section 6 of the Shipping Act, 46 U.S.C. § 40304, specifies the Commission actions that may be taken with respect to filed agreements, including requiring the submission of additional information. Section 15 of the Shipping Act, 46 U.S.C. § 40104, authorizes the Commission, if the need warrants, to require that ocean common carriers, among other persons, file periodic reports. Requests for additional information and the filing of periodic reports are meant to assist the Commission in fulfilling its statutory mandate of overseeing the activities of the ocean transportation industry. These reports are necessary so that the Commission can monitor agreement parties' activities to determine how their activities will affect the competitive landscape in ocean shipping.

2. The Commission's Bureau of Trade Analysis uses the information filed by agreement parties to monitor their activities as required by the Shipping Act and set forth in response 1. Under section 6(g) of the Shipping Act, 46 U.S.C. § 41307, the Commission must determine whether filed agreements will have substantially anti-competitive effects on prevailing trade conditions and, if so, whether the agreements will likely, by a reduction in competition, result in an unreasonable reduction in transportation service or an unreasonable increase in transportation cost. If it is shown, based on information collected under this rule, that an agreement is likely to have the foregoing adverse effects, the Commission may bring suit in U.S. District Court to enjoin the operation of that agreement. The information collected is not disclosed to the public and is only for internal analysis in support of the Commission's decision-making process.

3. Although no information is currently collected through automated or electronic means under this rule, the Commission is exploring systems and techniques to provide those as options for

respondents. Once implemented, these options will improve the Commission's efficiency and further reduce the burden on respondents. The Commission fully intends for the rule to be compliant with the GPEA mandate.

4. No duplication of effort is involved because similar information is not available from outside sources nor elsewhere in the Commission.

5. The collection of information does not have a significant impact on a substantial number of small businesses or other small entities.

6. Failure to collect this information or to collect the information less frequently would hinder the Commission's efforts in monitoring agreement activities. A likely result would be the Commission's inability to respond in a timely manner to deteriorating trade conditions that adversely affect the shipping public. For good cause, the rule does provide for a waiver from certain reporting requirements. For example, where agreement parties have such a small market share that they would not be in a position to affect rates, they may qualify for a waiver of some of the reporting requirements.

7. Except as noted later, the rule does not (1) provide for the submission of special reports on less than a quarterly basis, (2) require written responses in fewer than 30 days, (3) require the retention of records for more than three years, (4) include confidentiality pledges that are not supported by established statute authority, or (5) require respondents to submit proprietary information without protecting such information to the full extent of the law. Consistent with the filing practices contained in the Commission's Rules of Practice and Procedure, seven copies of an agreement or agreement modification must be filed. In addition, for agreement modifications, the Bureau requires a marked copy of pages to indicate where the changes have been made. Where required, five copies of an Information Form (Form FMC-150) must also be filed along with a new agreement. The extra copies are used to expedite handling among various involved staff/offices, provide quick public access to copies of filed agreements, and serve as receipted notice to respondents. Only one copy of any Monitoring Report (Form FMC-151) or any specific report is required to be filed. The Commission requires that copies of minutes be submitted within 21 days of the parties' meeting and that special capacity reports be submitted within 15 days of agreement on capacity changes. It is critical to its effective monitoring program to have these

reports as soon as practicable so that the Commission may react appropriately before commercial harm occurs.

8. The 60-day **Federal Register** notice regarding this extension was published December 22, 2006, at 71 FR 77021. Respondents had 60 days to respond with their views regarding collection of information; no comments were received. In an effort to develop better burden estimates for preparing reports under the regulation, Commission staff consulted with an industry counsel. This source provided estimates regarding the number of hours and level of employment involved in preparing submissions required by the regulation. The staff also consulted with a past agreement administrator to confirm estimates of the amount of time and the level of personnel involved in preparing reports.

9. Not applicable--the Commission does not provide any payment or gift to respondents.

10. Except for the agreements filed under section 5 of the Shipping Act, 46 U.S.C. § 40302, all information submitted to the Commission by filing parties under this rule is exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, replies to requests for additional information, monitoring reports, and other special reports requested from agreement parties. However, information that is confidential pursuant to the foregoing may be disclosed to the extent it is relevant to an administrative or judicial action or proceeding, to Congress, or if parties voluntarily disclose or make information publicly available. Third party comments are not protected by the confidentiality of section 6(g) of the Shipping Act, 46 U.S.C. § 40306. Comments on agreements may be protected in certain cases under the disclosure exemptions of FOIA, 5 U.S.C. 552(b)(c)(1-7), the Trade Secrets Act, 18 U.S.C. 1905, or other similar statutes.

11. Not applicable -- no questions of a sensitive nature.

12. The rule is designed to elicit information and data from respondents to ensure that agreements do not produce anti-competitive results. Commission staff revised its method for calculating the workload burden to obtain more current and accurate information. Commission staff interviewed an industry counsel who submits the vast majority of agreement filings. Counsel provided general information regarding the time spent by respondents preparing submissions, the general description of the

level of employment of individuals preparing documents, and a general cost of purchased data in preparing reports. As reported in Item 8 above, Commission staff sought confirmation from a past agreement administrator on these estimates.

Counsel represented that the time to compile data for monitoring report submissions from agreements ranged from about 7 to 50 person hours per report for agreement staff with an additional 3 to 12 person hours spent by the individual carriers per report. This translates into an estimated hour burden for the most burdensome reports ranging between 42 and 188 hours. This includes time spent on obtaining data, assembling forms, compiling information, and sending it to the Commission. According to counsel, the less burdensome reports tend to be from agreements with fewer parties and cover a smaller geographic scope. Thus, the amount of time in preparing required reports for such agreements would be less. We are estimating the hour burden for these "minor" agreements to be about a third of the major agreements. The chart below depicts the number of annual responses, estimated hours per response, and the overall total annual hours. The chart illustrates that the revised estimated burden is significantly less than currently reported.

Item

	<i>Response</i>	<i>Annual</i>	<i>Responses</i>	<i>Annual Hours Est. Per</i>
Agreements and Modifications				242
			2	
				484
With Information Forms (Form FMC-150)				12
				48
				576
Monitoring Reports				

Major Rate Agmts*		8	188
Minor Rate Agmts*	1,504	84	65
Capacity Agmts*	5,460	72	40
Periodic Rpts	2,880		80
		10	
			800
Contract Guidelines			88
			0.5
			44
Minutes Filing		886	
	2		1,772
Recordkeeping			
		200	.5
			100

* Form FMC-151

Total
Hours:

13,620

Current
Reported Burden:
35,770

Net Change: -22,150

Industry counsel indicated that respondents employ mid-level employees to collect, compile, and submit information to the Commission. Commission staff spoke with a former agreement administrator who provided estimates regarding mid-level salaries. The staff then consulted the United States Department of Labor's *Outlook Handbook* to determine estimated salary levels. The handbook did not have an appropriate occupation category that fit respondents' employees. Commission staff then consulted *Logistics Management*, an industry periodical, which contained an article on an industry salary survey that it conducted in 2006. A suitable mid-level occupation was identified from this survey and used as the basis for respondents' cost.

The foregoing identified professional salary was used in calculating respondents' hourly costs. The hourly cost was multiplied by a percentage to account for benefits and an additional cost factor for overhead was added to obtain an inclusive hourly rate.

Counsel also advised that additional costs are incurred in obtaining data from a private vendor for report preparation. The data referenced by counsel has a variety of carrier uses beyond preparation of Commission required submissions and the data are not purchased solely for such submissions. As such, this cost has been discounted accordingly and included in the respondents' total cost calculation.

Further, respondents incur costs for required agreement filing fees. The latest five-year average for filing fees is \$59,000 per year.

After compiling the costs associated with wages, benefits, overhead, data purchases, and filing fees, the total annual cost to respondents for this information collection is estimated at \$1,262,878.

13. There are no capital or start up costs associated with this regulation, nor are there any operational, maintenance, or purchase of service components.

14. The cost to the Federal Government for this collection of information is estimated to be \$1,706,297. This includes wages, overhead, and benefits. This cost is offset by the collection of \$59,000 in required filing fees. The net estimated total annual cost to the government of this collection of information is \$1,647,297.

15. The net decrease in burden hours for respondents from the current reported burden of 35,770 hours to 22,150 hours, as reflected in Item 12 above, is accounted for by two factors. First, Commission staff estimated a substantially higher amount of time to complete responses than the estimate provided by industry counsel and confirmed by a former agreement administrator. For example, whereas Commission staff previously estimated 250 hours per response for a major rate agreement, industry counsel and others have indicated that a more realistic time would be approximately 188 hours. The same logic applies to minor rate agreements where Commission staff previously estimated 170 hours but now a more credible estimate appears to be about 65 hours. To a lesser extent, the second factor is the slight decrease in the number of annual responses.

16. The Commission does not intend to publish any information collected under this regulation.

17. The Commission is not seeking approval to exclude the display of the expiration date for OMB approval of this information collection.

18. The Commission proposes no exception to the certification statement identified on OMB form 83-I.