

**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. Section 40301 of 46 U.S.C. 40101 et seq. (“the Act”), identifies certain commercial agreements by or among ocean common carriers and marine terminal operators (MTOs) that fall within the jurisdiction of that Act. Section 40302 of the Act requires that carriers and MTOs file those agreements with the Federal Maritime Commission. Section 40304 of the Act specifies the Commission actions that may be taken with respect to filed agreements, including requiring the submission of additional information. Section 40104 of the Act authorizes the Commission 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 allow the Commission to effectively monitor agreement parties’ activities and to determine whether those activities are adversely affecting 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 Act and set forth in response 1. Under section 41307 of the Act, 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 for the District of Columbia 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 the rules do not currently require that pertinent information be collected through automated or electronic means, the Commission has a pilot program in place where certain required reports are provided electronically. Once an evaluation is completed on the efficacy of the pilot program, the Commission will propose a change in its rules to provide that option for affected parties. Once implemented, this option will improve the Commission’s efficiency and further reduce the burden on respondents. The Commission fully intends that any proposed rule will comply with the GPEA mandate.

4. No duplication of effort is involved because similar information is not available from outside sources or 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 rate or service levels adversely, they may qualify for a waiver of some of the reporting requirements.

7. Except as noted below, 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 for certain classes of new agreements and modifications to agreements. 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 March 24, 2010, at 75 FR 14158. 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 industry counsel. This source provided estimates regarding the number of hours and level of employment involved in preparing submissions required by the regulation.

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

10. Except for the agreements filed under section 40302 of the Act, 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 40306 of the Act. 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. As in the past, the Commission staff contacted an industry counsel who submits the vast majority of agreement filings to update previous data regarding respondents' time in complying with the rules. Said counsel provided 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.

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 73 and 151 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 40 percent of the major agreements. The table below provides the number of annual responses, estimated hours per response, and the overall total annual hours. The data reflect that the revised estimated burden is about 25 percent less than currently reported.

Item

	<i>Hours</i>	<i>Responses</i>	<i>Annual Hours Est. Annual Per Response</i>
Agreements and Modifications			120
			4
			480
With Information Forms (Form FMC-150)			12
			52
			624

Monitoring Reports

Major Rate Agmts*			12	151
				1,812
Minor Rate Agmts*			20	61
				1,220
Capacity Agmts*	24		18	
	432			
Rate & Capacity Agmts*				24

73

Contract Guidelines

1,752
167

1

Periodic Reports

167

24

10

* Form FMC-151

240

Minutes Filing

3.5 1,050
3,675

Recordkeeping

.5 200
100

**Total
Hours:**

10,502

Current

Reported Burden:
13,620

Net Change: -3,118

Industry counsel indicated that respondents employ mid-level management employees to collect, compile, and submit information to the Commission. The staff used an industry salary survey conducted by *Logistics Management*, an industry periodical, in 2009 that presented salary data for various levels of industry positions for 2008. 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.

After compiling the costs associated with wages, benefits, and overhead, the total annual cost to respondents for this information collection is estimated at \$537,282.

13. In addition to the total man-hour cost burden, counsel confirmed that additional costs are incurred in obtaining data from a private vendor for report preparation (\$80,000). 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. Further, respondents incur costs for required agreement filing fees. The latest five-year average for filing fees is \$49,503 per year. Thus, in addition to the man-hour costs, respondents incur an additional \$129,503 per annum under the regulations. This cost had been reported erroneously in previous years as a component of the costs associated with wages, benefits and overhead. Aside from the foregoing data collection costs and filing fees, respondents have no capital or start-up costs associated with this regulation.

14. The cost to the Federal Government for this collection of information is estimated to be \$1,363,001. This includes wages, overhead, and benefits. This cost is offset by the collection of \$49,503 in required filing fees. The net estimated total annual cost to the government of this collection of information is \$1,313,498.

15. The net decrease in burden hours for respondents from the current reported burden of 13,620 hours to 10,502 hours, as reflected in Item 12 above, is accounted for by two factors. First, the number of agreements received has fallen considerably over the last three years, and the number of agreements required to submit reports has decreased as well.

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.

PART B - Collection of Information Employing Statistical Methods

Information collected or reported under this regulation employs no statistical methodology. By statute, all respondents are required to file their agreements with the Commission. Sampling of the total population is inconsistent with the requirements of the underlying statute.