

**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 between 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. The Commission plans to propose a change in its rules to provide that option for affected parties in an upcoming rulemaking scheduled for calendar year 2014. The Commission's pilot program to allow electronic filing of required reports has been so successful that ninety-four percent (94%) of all such filings are now submitted electronically. Once formalized through this rulemaking, this option will likely be adopted by additional filers which will continue to improve the Commission's efficiency and further reduce the burden on respondents. The Commission fully intends that any proposed rule will comply with the Government Paperwork Elimination Act 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. The Commission's regulations do provide for a waiver from certain reporting requirements for good cause. 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 statutory or regulatory 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, five 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 revisions 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 June 26, 2013, at 78 FR 38335. 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 agreement parties do not engage in anti-competitive conduct. As in the past, the Commission staff contacted an industry counsel who submits many of the agreement filings with the agency 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 advised that, while some agreements had received partial waivers of certain reporting requirements, the Federal Maritime Commission itself had imposed alternative periodic reporting requirements on certain agreements and carriers through Commission Orders in lieu of the reporting requirements prescribed in the Commission's regulations, which, he advised, were substantially more burdensome to prepare. The Commission had placed such alternative periodic reporting requirements on these agreements and carriers pursuant to investigations regarding potential anti-competitive conduct of the agreement parties in a number of major U.S. trades. During the current fiscal year, an analysis of the information collected under each of these Commission Orders was performed and the Commission was provided with a report of the findings. In each instance, the Commission subsequently voted to discontinue the alternative periodic reporting requirements deemed more time intensive by counsel and impose significantly reduced reporting requirements. Indeed, in some cases, reports utilized for other purposes within an agreement were accepted by the Commission in lieu of the reports required under the regulations. Thus, the regulatory burden on these agreements associated with the information collection has been substantially reduced. The Commission also plans a comprehensive examination of these reporting requirements when updating the agreement regulations in calendar year 2014 with an eye towards reducing the regulatory burden of the current reporting requirements.

For all other agreements, previous estimates of respondent's time expended in complying with reporting requirements under the Commission's regulations are appropriate, as the requirements have not changed. More specifically, 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 more burdensome reports ranging between 71 and 155 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 reflects a larger number of filings for some categories as a result of more frequent reporting pursuant to Commission Orders rather than the standard reporting requirements under the Commission’s rules. Thus, the estimated time burden has increased. As noted, those Commission Orders have been terminated during this fiscal year and greatly reduced reporting requirements are now in place.

<i>Item</i>	<i>Hours</i>	<i>Responses</i>	<i>Hours Per Response</i>	<i>Annual Est.</i>
Agreements and Modifications				139
			556	4
With Information Forms (Form FMC-150)			52	14
			728	
Monitoring Reports				
Major Rate Agmts*			16	
			155	
			2,480	
Minor Rate Agmts*			16	
			45	
			720	
Capacity Agmts*		12	20	
Rate & Capacity Agmts*	240			24
			88	
			2,112	
Contract Guidelines				115

		1	
		115	
Periodic Reports		44	71
			3,124
* Form FMC-151			
Minutes Filing		921	
	3.75	3,454	
Recordkeeping		200	
	.5	100	

**Total
Hours:**

13,629

**Current Reported
Burden: 10,502**

Net Change: 3,127

Industry counsel indicated that respondents employ mid-level management employees to collect, compile, and submit information to the Commission. A suitable mid-level occupation was identified from the Department of Labor's 2011 *National Industry-Specific Occupational Employment and Wages* report, 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 \$660,052.

13. There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

14. The cost to the Federal Government for this collection of information is estimated to be \$940,209. This includes wages, overhead, and benefits.

15. The net increase in burden hours for respondents from the current reported burden of 10,502 hours to 13,629 hours, as reflected in Item 12 above, is accounted for by two factors. First, the number of agreements received has increased over the last three years. Second, the number of reports and minutes collected from respondents and the complexity of those reports had increased due to special requirements imposed by Commission Order. As these requirements have been substantially reduced when the Commission Orders were terminated, a reduction in respondents' estimated time burden is expected.

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. Not applicable – there are no exceptions to the certification statement.

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.

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