

**SUPPORTING STATEMENT FOR
THE 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 (Shipping Act or Act), 46 U.S.C. 40101 et seq., establishes an alternative antitrust regime that grants limited antitrust immunity to regulated entities and requires that they file their commercial agreements with the Federal Maritime Commission (FMC or Commission). Section 40301 identifies which agreements between ocean common carriers and/or marine terminal operators (MTOs) fall within the jurisdiction of the Act. Section 40302 requires that carriers and MTOs file those agreements with the Commission. Section 40304 provides the authority for Commission action on filed agreements, including the authority to require information from parties to an agreement. Section 40104 provides the authority for the Commission to require periodic or special reports from carriers and other related persons. These requests for additional information and the filing of reports assists the Commission in its statutory responsibility to analyze the activities of parties to agreements. Such information aids the Commission in monitoring the activities of agreement parties to determine whether any Commission action is required in response to adverse market conditions resulting from the agreement.

2. The Commission uses the information filed by agreement parties to monitor their activities as required by the Act and as discussed in response to Question 1 above. Under 46 U.S.C. § 41307, the Commission must determine whether an agreement will have, or has resulted in, a substantial reduction in competition within the prevailing market leading to an unreasonable reduction in transportation service or an unreasonable increase in transportation costs. In such cases, the Commission would take action to seek to enjoin the agreement in the U.S. District Court for the District of Columbia. Information collected from agreement parties (aside from the agreement itself) is not publicly disclosed, and is used for the internal decision process of the Commission and any administrative or judicial proceeding.

3. The regulations in 46 CFR part 535 were amended on June 13, 2016, to provide parties to agreements with the option to file their agreements and periodic reports electronically with the FMC. The purpose of allowing electronic filing was to reduce filing burdens and costs, streamline the Commission’s internal agreement review process, and expedite public access to agreements.¹

¹ Although the Commission expects that the newly introduced electronic filing option will reduce the burden on agreement parties, we are unable to estimate the burden reduction at this time because we cannot reasonably assess how many agreement filings will shift from paper filing to electronic submission.

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 impact small businesses or other small entities.
6. Failure to collect this information or to collect the information less frequently would prevent the Commission from performing its statutory responsibilities with respect to agreements between carriers and MTOs. 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 regulations in 46 CFR part 535 allow parties to agreements to apply for a waiver from the reporting requirements for good cause.
7. Except as noted below, the regulations in 46 CFR part 535 do not: (1) require the submission of reports on less than a quarterly basis; (2) require written responses within 30 days of a request; (3) require the retention of records for more than three years; (4) require a statistical survey; (5) require the use of a statistical data classification unapproved by OMB; (6) include confidentiality pledges that are not supported by established statutory or regulatory authority; or (7) require proprietary information without protection to the extent permitted by law. Under the regulations, parties opting to file electronically are only required to submit one true copy of the original agreement and, if applicable, one copy of the Information Form, Form FMC-150. Modifications to effective agreements filed electronically need one clean copy of the modification and a marked copy to indicate the changes to the agreement. If filing in paper form, the regulations require one true copy of the original agreement or modification and seven additional copies, along with an original and five copies of the Information Form, if applicable, for expedient distribution to the various offices and staff that are required to review the agreement. Modifications to effective agreements filed in paper form also need a marked copy to indicate the changes to the agreements. Whether filed in paper form or electronically, agreements required to file periodic reports need only to submit one copy. Such reports include Monitoring Reports (Form FMC-151), prescribed reports other than Form FMC-151, voluntary service contract guidelines, and minutes of agreement meetings. To receive timely information where the Commission may need to take action, minutes of agreement meetings are required to be submitted within 21 days of the meeting, and an advance notice of a significant reduction in vessel capacity under an agreement is required to be submitted within 15 days of implementation as part of Form FMC-151. This Notice of Proposed Rulemaking (NPRM) would redefine capacity agreements that would be required to file Monitoring Reports, but limits them to agreements between three or more carriers, which presently equates to 22 capacity agreements. The NPRM also would require parties to agreements exempted from filing under 46 CFR subpart C of part 535 to submit a copy of the agreement within 15 days of a written request from Commission staff in cases where the Commission needs to examine the exempted agreement. These cases, however, are limited and involve submitting copies of existing documents rather than creating new documents or gathering information.

8. This NPRM will be published in the **Federal Register** and respondents will have 60 days to submit comments on the estimated cost and hour burdens of the collection of information. The Commission will review and address the comments in its final rule.
9. Not applicable, the Commission does not provide any payment or gift to respondents.
10. Except for the agreements filed under § 40302, information submitted to the Commission by filing parties under the regulations in 46 CFR part 535 is exempt from disclosure under 5 U.S.C. § 552 in accordance with 46 U.S.C. § 40306. Section 40306 only permits the Commission to disclose such information to the extent it is relevant to an administrative or judicial proceeding or to Congress.
11. Not applicable, no questions of sensitive nature.
12. Estimates of the hour burden of the collection of information for the NPRM are provided below. The current burden estimates for part 535 were submitted in September 2013 and amounted to an annual estimate of 13,629 hours.² The burden estimates were derived in consultation with agreement counsel. Specifically, agreement counsel provided information regarding the time spent by respondents preparing submissions, the level of employment of individuals preparing documents, and certain costs.

The estimates have been updated to reflect agreement and related report filings for fiscal year 2015.³ The NPRM would exempt certain basic agreements from the 45-day waiting period and Information Form (Form FMC-150) requirements. It would also require that more capacity agreements, and modifications adding members to effective capacity and rate agreements, submit Information Forms (from 10 to 11 annual filings for fiscal year 2015). It would reduce the amount of Information Form data required from parties to rate agreements. On average, it is estimated that the NPRM would reduce the Information Form burden from 52 to 40 hours per response.

The NPRM would increase the number of capacity agreements required to submit Monitoring Reports (Form FMC-151) from 65 to 88 agreement annual filings for fiscal year 2015. It would reduce the amount of Monitoring Report data required from parties to rate

² The annual responses for part 535 in the 2013 submission were 139 agreements and modifications, 14 Information Forms (Form FMC-150), 68 Monitoring Reports (Form FMC-151), 44 other reports, 115 contract guidelines, 921 minute filings, and 200 recordkeeping items.

³ The annual responses for part 535 in fiscal year 2015 were 258 agreements and modifications, 10 Information Forms (Form FMC-150), 105 Monitoring Reports (Form FMC-151) (40 filings for rate agreements and 65 filings for capacity agreements), 16 other reports, 115 contract guidelines, 785 minute filings, and 1,295 recordkeeping items. The recordkeeping items pursuant to the regulations in 46 CFR § 535.301(d) are estimated, but were substantially increased from the estimate in the 2013 submission. Commission staff believes that the number of recordkeeping items were underestimated in the 2013 submission.

agreements, which is estimated to decrease the average burden from 155 to 78 hours per response. The NPRM would likely increase the number of meeting minutes from 785 to 942 annual filings to include discussions conducted by new forms of electronic media. Based on the filings for fiscal year 2015, it is estimated that the NPRM would reduce the annual burden for the collection of information under part 535 by 1,544 hours, or 11 percent, from 13,571 hours (with no changes to the regulations) to 12,027 hours (with the changes proposed by the NPRM).⁴

**NOTICE OF PROPOSED RULEMAKING, FMC DOCKET NO. 16-04
BASED ON FY 2015 FILINGS**

Item	Annual Response	Hours per Response	Est. Annual Hours
Agreements and Modifications Filings	258	4	1,032
with Information Form (FMC-150)	11	40	440
Monitoring Reports			
Rate Agreements *	40	78	3,120
Capacity Agreements *	88	20	1,760
Reports other than FMC-151	24	71	1,704
* Form FMC-151			
Contract Guidelines	115	1	115
Minutes Filings	942	3.75	3,533
Recordkeeping	1,295	0.25	324
46 CFR 535.301(d)			
		Total Hours	12,027
		2015 Hours (no NPRM)	13,571
		Net Change (w/NPRM)	(1,544)
		Percent	-11%

For cost estimates to respondents, agreement counsel indicated that mid-level management employees collect, compile, and submit the information to the Commission. A suitable mid-level occupation was identified from the Occupational Employment and Wages, May 2015 report prepared by the U.S. Bureau of Labor Statistics (11-3071 Transportation, Storage, Distribution Managers, Deep Sea, Coastal, and Great Lakes Water Transportation). The salary for this occupation was used to calculate a wage cost of \$57.48 per hour for respondents.

⁴ The figures for the estimated annual hours were rounded to the nearest whole number, which accounts for any discrepancy in the summation.

This cost was multiplied by 114.98% to estimate benefits and overhead.⁵ On this basis, the total annual cost to respondents for the collection of information is estimated at \$1,486,204. Even though the estimated burden hours are lower than the 2013 estimate, the cost estimate is significantly greater than the 2013 estimate of \$660,052 because the 2013 estimate did not fully account for benefits and overhead.

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 \$1,827,350, including wages, benefits, and overhead. Although the amount of staff time spent reviewing and analyzing agreements is not expected to change, the cost estimate is significantly greater than the 2013 estimate of \$940,209, because the 2013 estimate did not fully account for benefits and overhead.

15. As discussed in response to Question 12, the estimates have been updated to reflect agreement and related report filings for fiscal year 2015. In this period, the collection of information under part 535 included 258 agreements and modifications, 10 Information Forms (Form FMC-150), 105 Monitoring Reports (Form FMC-151), 16 other reports, 115 contract guidelines, 785 minute filings, and 1,295 recordkeeping items. The NPRM would exempt certain basic agreements from the 45-day waiting period and Information Form requirements. It would require more capacity agreements and modifications adding members to effective capacity and rate agreements to submit Information Forms, but reduce the amount of Information Form data required from parties to rate agreements. It would increase the number of capacity agreements required to submit Monitoring Reports, and reduce the amount of Monitoring Report data required from parties to rate agreements. It would likely increase the number of meeting minute filings to include discussions conducted by new forms of electronic media. Based on these changes, it is estimated that the annual burden for the collection of information under 46 CFR part 535 would be reduced by 1,544 hours, or 11 percent, from 13,571 hours (with no changes to the regulations) to 12,027 hours (with the changes proposed by the NPRM).

16. The Commission does not publish the information collected under these regulations. The Commission publishes the agreements themselves on its website for the public to view, and includes basic statistics on the number of agreement filings in annual reports to Congress.

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.

⁵ The percentage estimate of employee benefits and overhead for respondents is based on the estimate derived for Commission staff for fiscal year 2015, in accordance with OMB Memorandum M-08-13, OMB Circular No. A-76, and OMB Circular A-25.

Part B – Collection of Information Employing Statistical Methods

Information collected or reported under part 535 employs no statistical methodology. By statute, 46 U.S.C. § 40302, all respondents are required to file their agreements with the FMC. Sampling of the total population is inconsistent with the requirements of the underlying statute.