

**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. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.

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 assist 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. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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 “or to substantially lessen competition in the purchasing of certain covered services.” 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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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. Although the rules do not currently require that pertinent information be collected through automated or electronic means, the Commission has deployed a software application, the eAgreements system, that optionally allows for the electronic filing of new agreements and agreement amendments for Commission review along with related information. Another application, the eMonitoring system, optionally allows the electronic filing of information relating to the monitoring of existing agreements. Both of these applications have achieved widespread adoption within the industry, with over 95 percent of all agreements and amendments now being filed electronically, and approximately 98 percent of monitoring information being filed electronically. Both applications have significantly improved the Commission's efficiency and reduced the burden on respondents.

4. Describe efforts to identify duplication.

No duplication of effort is involved because similar information is not available from outside sources or elsewhere in the Commission.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Failure to collect this information or to collect the information less frequently would hinder the Commission's efforts in reviewing the likely competitive impact of new agreements and amendments to existing agreements, as well as monitoring agreement activities. An anticipated 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. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Except as noted below, Commission requirements do not (1) provide for the submission of special reports more frequently than on a quarterly basis, (2) require written responses in fewer than 30 days, (3) require the retention of records for more than three years, (4) request information that is connected to a statistical survey not designed to produce valid and reliable results, (5) require the use of statistical data classification that has not been reviewed and approved by OMB, (6) include confidentiality pledges that are not supported by established statutory or regulatory authority, or (7) require respondents to submit proprietary information without protecting such information to the full extent of the law.

As was stated in item 3 above, the vast majority of filings are submitted electronically, eliminating the need for multiple copies of any document. However, for the occasional agreement filing that is provided in hard copy, consistent with 46 C.F.R. § 535.401(a)(1), seven copies of an agreement or agreement modification must be provided. 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. 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. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside FMC to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

The 60-day **Federal Register** notice regarding this extension was published May 31, 2019, at 84 FR 25275. 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. These sources assisted with estimates regarding the number of hours and level of employment involved in preparing submissions required by the regulation.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

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

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

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 rendered confidential under section 40306 of the Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why FMC considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable -- no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, FMC should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

As previously reported, 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 carrier and marine terminal operator (MTO) agreements through alternative periodic reporting requirements in lieu of the reporting requirements prescribed in the Commission's regulations. In some cases, these alternative periodic reporting requirements were substantially more burdensome to prepare. The Commission had placed such alternative periodic reporting requirements on these agreements, carriers and MTOs pursuant to investigations regarding potential anti-competitive conduct of the agreement parties in a number of major U.S. trades, and in response to anti-competitive concerns identified during the initial review of an agreement.

The continuing evolution in the nature of cooperation among carriers and MTOs over the past several years has resulted in changes in the Commission's monitoring of agreements to address these various forms of cooperation. A notable development in the past few years has been the decline of carrier rate discussion agreements in the U.S. trades, reducing the burden associated with monitoring requirements on that class of agreement. In contrast, during the past several years, the major global ocean carriers have restructured their alliance agreements to expand their cooperation under those agreements. A further development with respect to agreements requiring monitoring has been emergence over the past several years of novel forms of cooperation among ports and MTOs in filed agreements. The Commission has deemed it necessary to impose alternative periodic reporting requirements to ascertain the impact of these novel MTO agreements on transportation price, transportation service, and competition under the Shipping Act. As these unique agreements have become a more considerable portion of overall agreement filings, they have therefore, concomitantly increased agreement monitoring, despite the decline of traditional rate discussion agreements. Thus, the overall regulatory burden associated with the information collection has increased since 2013.

It is estimated 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 alliance and rate discussion monitoring 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 have accounted for this wide range of potential burdens with the estimated averages provided in the table below.

The table below provides the number of annual responses, estimated hours per response, and the overall total annual hours. The categories of agreements have been adjusted to reflect the changes in agreement filings discussed above. The data reflects a larger number of filings for some categories as a result of more frequent reporting pursuant to alternative periodic reporting requirements rather than the standard reporting requirements under the Commission’s rules. Thus, as noted, the estimated time burden has increased.

Item	Annual Responses	Hours per response	Est. Annual Hours
Agreements and Modifications:			
With Information Form (Form FMC-150)	17	50	850
Without Information Form	60	6	360
Terminations of Agreements	116	0.25	29
Meeting Minutes	1240	2	2,480
Monitoring Reports:			
VOCC Rate Discussion Agreements	40	80	3,200
Alliance Agreements	12	145	1,740
Other Reporting Requirements	556	12	6,672
Recordkeeping (46 CFR 535.301(d)) ¹	1,295	0.25	324
Total Annual Burden			15,655
		Current Reported Burden:	13,629
		Net change:	2,026

¹ The recordkeeping items pursuant to the regulations in 46 C.F.R. § 535.301(d) are estimated, but were substantially increased from the previous estimate submitted in the 2013 submission. Commission staff believes that the number of recordkeeping items were underestimated in the 2013 submission.

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 2018 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 \$59.98 per hour for respondents. This cost was multiplied by 114.89% to estimate benefits and overhead.²

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 \$2,017,789.

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with**

² The percentage estimate of employee benefits and overhead for respondents is based on the estimate derived for Commission staff for fiscal year 2018, in accordance with OMB Memorandum M-08-13, OMB Circular No. A-76, and OMB Circular A-25.

requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

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

14. Provide estimates of annualized cost to the Federal government.

The cost to the Federal Government for this collection of information is estimated to be \$2,073,301. This includes wages, overhead, and benefits.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

The net increase in burden hours for respondents from the current reported burden of 13,629³ hours to 15,655 hours, as reflected in Item 12 above, is accounted for by a number of factors. However, those factors can generally be summarized in that, the nature of agreements received since the previous Paperwork Reduction Act submission has significantly increased in complexity. These increasingly complicated agreements with a wider range of potentially anti-competitive outcomes require a greater level of initial burden (given that more extensive review is required for unique agreements) and more detailed oversight through special monitoring requirements.

Regarding the government burden, any increased government burden was mitigated due to a Commission automation initiative. More specifically, in FY 2017, the Commission launched the eAgreements system which provided for the electronic filing of agreements in lieu of paper filings, streamlined the Commission's internal review of agreements, and automated the manual online publication process for filed agreements. These efforts reduced staff resources needed to process, review, publish and manage the Commission's filed agreements. While electronic filing is optional, external users were quick to adopt it. Currently, over 99 percent of agreements are filed electronically through the eAgreements system. Thus, automation has resulted in less resources being devoted to internal business processes, thereby allowing staff to focus efforts on analysis of the impact of filed agreements.

16. For collections whose results will be published, outline the plans for tabulation and publication.

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

³ The current burden estimates for part 535 were submitted in September 2013 and amounted to an annual estimate of 13,629 hours.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

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

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

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.

PART 535 IC REINSTATEMENT CALCULATIONS - GOVERNMENT/INDUSTRY BURDEN

Government Burden

Employee	GS level	Hourly base rate (from OPM 2018 pay table)	Overhead (114.89%)	Adjusted Hourly Salary (base + overhead)	Number of Employee Hours	Total Cost	2013 Hours Reported
BTA Director (FC)	SES	\$ 82.56	\$94.85	\$ 177.41	525	93,141.92	416
BTA Deputy (TF)	15/7	\$ 77.50	\$89.04	\$ 166.54	650	108,250.84	624
OAGR							
Director (JG)	14/5	\$ 62.23	\$71.50	\$ 133.73	1560	208,612.63	1560
Industry Analyst (KD)	12/7	\$ 46.89	\$53.87	\$ 100.76	2025	204,042.89	1768
Industry Analyst (SJ)	12/3	\$ 41.68	\$47.89	\$ 89.57	2025	181,371.46	1768
						prgm support - position eliminated	504
OECA							
Director (AH)	15/10	\$78.68	\$90.40	\$ 169.08	1350	228,251.86	1352
Industry Economist (JJ)	14/7	\$ 65.89	\$75.70	\$ 141.59	1320	186,900.15	1312
Industry Economist (DR)	13/2	\$ 48.01	\$55.16	\$ 103.17	1760	181,576.89	1760
Industry Economist (SW)	13/1	\$ 46.46	\$53.38	\$ 99.84	1760	175,714.69	1760
Industry Economist (SB)	12/7	\$ 46.89	\$53.87	\$ 100.76	1760	177,340.98	1760
Industry Economist (HB)	13/4	\$ 51.11	\$58.72	\$ 109.83	1760	193,301.29	1760
Program Support Specialist (SU)	11/8	\$ 40.21	\$46.20	\$ 86.41	1560	134,795.34	1560
Grand Total					18055	\$ 2,073,300.95	17904

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PART 535 IC REINSTATEMENT CALCULATIONS - GOVERNMENT/INDUSTRY BURDEN

Industry Burden

Employee	Base rate (BLS May 2018 Hourly Mean Wage)	Overhead (114.89%)	Adjusted Hourly Salary (base + overhead)	Number of Employee Hours	Total Cost
BLS 11-3071 Transportation, Storage and Distribution Managers	\$ 59.98	\$68.91	\$ 128.89	15,655	\$ 2,017,789
https://data.bls.gov/cgi-bin/print.pl/oes/current/oes113071.htm					

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