

Federal Maritime Commission

Title: Ocean Common Carrier and Marine Terminal Operator Agreements

ICR Reference No.: 202001-3072-003

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., requires that Vessel Operating Common Carriers (VOCCs) and Marine Terminal Operators (MTO) file agreements with the Federal Maritime Commission (FMC or Commission). Section 40301 identifies which agreements between VOCCs and MTOs fall within the jurisdiction of the Act. Section 40302 requires that carriers and MTOs file those agreements with the Commission. Section 40304 directs, and provides the authority for, Commission action on filed agreements, including submission of 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.

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.

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, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

All agreement filings and required reports are submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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. Neither VOCC nor MTO filers are considered small businesses.

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 provide for a waiver from certain reporting requirements for good cause.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or 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; or
- * 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 apply to these special circumstances.

(1) provide for the submission of special reports more frequently than on a quarterly basis:

For global vessel sharing agreements (often referred to as alliances), data are required to be submitted monthly. This is because these agreements have the broadest and most complex scope and lags in reviewing their operational data can have an adverse effect on the Commission's ability to respond to anti-competitive behavior.

(2) require written responses in fewer than 30 days:

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 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 by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency 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 reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On August 23, 2023, the Commission published a notice and request for comment in the *Federal Register* (88 FR 57459) regarding the agency's request for approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. During the 60-day period, the Commission received no comments on the request for OMB clearance.

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

Not applicable.

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 entity-specific information submitted to the Commission by filing parties under this rule is exempt from disclosure under 5 U.S.C. 552. 46 U.S.C. 41110(b) states, “Nothing in this section, and the amendment made by this section, shall be construed to compel the public disclosure of any confidential or proprietary data, in accordance with section 552(b)(4) of title 5, United States Code.”

Third party comments are 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.

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, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices. * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**

*** Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

The table below provides the number of annual responses, estimated hours per response, and the overall total annual hours. This includes an increase in burden hours for global vessel sharing agreements (“alliance agreements”), offset by a decrease in the total number of agreements on file that are competitively concerning and require filing meeting minutes.

Thus, as noted, the estimated time burden has decreased.

Item	Annual Responses	Hours per response	Est. Annual Hours
Agreements and Modifications:			
With Information Form (Form FMC-150)	15	50	1,125
Without Information Form	60	6	360
Terminations of Agreements	36	0.25	9
Meeting Minutes	850	2	1,700
Monitoring Reports:			
VOCC Rate Discussion Agreements	40	50	2,000
Alliance Agreements	36	160	5,760
Other Reporting Requirements	300	10	3,000
Recordkeeping (46 CFR 535.301(d))	1,300	0.25	325
Total Annual Burden			14,279

Total Annual Burden: 14,279
Current Reported Burden: 15,655
Net decrease: 1,376

In determining respondents' cost estimates, the Commission utilized representations made by counsel representing filed agreements noting 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 2022 report prepared by the U.S. Bureau of Labor Statistics (11-3071 Transportation Manager). The salary for this occupation was used to calculate a wage cost of \$52.36 per hour for respondents. This cost was multiplied by 107.4% to estimate benefits and overhead resulting in a total cost per hour of \$108.59 and total annual cost to respondents of \$1,550,556.61.

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 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 costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The cost to the Federal Government for this collection of information is estimated to be 12,860 hours at a cost of \$1,523,046 annually. This includes compensation and overhead. Overhead is assumed to be 107.4 percent.

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The net decrease in burden hours for respondents, as reflected in Item 12 above, is accounted for by a number of factors. This includes an increase in burden hours for the increasingly complex global vessel sharing agreements, but offset by a decrease in the total number of agreements on file that are competitively concerning, including fewer agreements that allow participants to discuss price.

Government burden has been decreased due to the automation of information collection through automated systems and internal development of code to streamline data extraction and analysis.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The Commission may aggregate and publish information on its website concerning trends in revenues, operations, capacity, and schedule reliability for VOCCs and productivity metrics for MTOs. These publications would occur quarterly or less frequently.

The Commission has publication criteria that will minimize the risk of disclosure of confidential business information. These criteria include, at a minimum, the number of entities required for each calculation and an established threshold to ensure no single entity dominates a calculation.

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.

Not applicable.

18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

Not applicable.