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(NOVEMBER 29, 1994)  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PART 572

[DOCKET NO. 94- 31 ]

INFORMATION FORM AND POST-EFFECTIVE  
REPORTING REQUIREMENTS FOR  
AGREEMENTS AMONG OCEAN COMMON CARRIERS  
SUBJECT TO THE  
SHIPPING ACT OF 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the information submission requirements for agreements among ocean common carriers subject to the Shipping Act of 1984. The Commission proposes to replace the current information form that accompanies newly filed agreements with a new form applicable to certain kinds of agreements, which requires the submission of specific data on the agreement member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement. In addition, the Commission proposes regulations that require the member lines of certain kinds of effective agreements to submit reports on their operations on a regular and ongoing basis, which would reflect the lines' cargo carryings, revenue results and port service patterns after they entered into the agreement. The application of the proposed rule to a particular agreement depends primarily on whether the agreement authorizes its carrier members to engage in certain

activities, and secondarily on the carrier members' combined market share. An agreement that does not authorize any of the activities specified by the proposed rule would still be filed with the Commission, unless it qualifies for one of the Commission's existing filing exemptions, but would not have any information form or reporting obligations. The intent of the proposed rule is to provide the Commission with improved information on the impact of concerted carrier practices on the foreign commerce of the United States, and to facilitate the processing and monitoring of ocean carrier agreements under the standards of the Shipping Act of 1984.

**DATES:** Comments due [insert date 60 days after date of publication in the Federal Register].

**ADDRESS:** Send comments (original and fifteen copies) to:  
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SUPPLEMENTARY INFORMATION:

A. Background

The jurisdiction of the Federal Maritime Commission ("FMC" or "Commission") over ocean carrier agreements in the foreign commerce of the United States extends under section 4(a) of the Shipping Act of 1984 ("1984 Act") to all agreements to:

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in exclusive, preferential, or cooperative working arrangements . . . ;

(6) control, regulate, or prevent competition in international ocean transportation; and

(7) regulate or prohibit . . . use of service contracts.

46 U.S.C. app. 1703(a).

The reforms in 1984 to the Shipping Act were intended in large part to facilitate the swift effectiveness, with immunity from the antitrust laws, of such agreements. Section 15 of the former Shipping Act, 1916 ("1916 Act"), had required carriers to secure Commission approval for any agreement governing rates, conditions of service, or similar matters, before such an agreement could become effective. Under standards set forth in section 15, the Commission was permitted to disapprove, cancel, or modify any agreement that it found to be unjustly discriminatory or unfair, or to operate to the detriment of the commerce of the United States,

or to be contrary to the public interest, or to be in violation of the 1916 Act. 46 U.S.C. 814 (1982).

The Commission, with Supreme Court approval, had taken the position that agreements to set rates, pool revenues, restrict capacity, or to engage in other activities that normally would be contrary to the antitrust laws were presumed to be contrary to the public interest, and would be approved only if they were shown to be "required by a serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act." FMC v. Svenska Amerika Linien, 390 U.S. 238, 243 (1968). The burden of making this showing was placed upon the carrier proponents of an agreement, on the ground that information regarding the operation and probable future impact of an agreement "[a]lmost uniformly . . . is in the hands of those seeking approval . . . and it is incumbent upon those in possession of such information to come forward with it." Mediterranean Pools Investigation, 9 F.M.C. 264, 290 (1966). Under these procedures, the implementation of agreements had often been delayed for considerable amounts of time, especially if formal protests were made. See Marine Space Enclosures, Inc. v. FMC, 420 F.2d 577 (D.C. Cir. 1969) (requiring that the Commission hold a hearing when a protest raising substantial issues had been filed). In many cases, protests were filed by other carriers, who effectively delayed or blocked their competitors' business plans.

The 1984 Act did away with the requirement that an agreement had to be approved by the Commission before it could lawfully

operate. Instead, agreements now generally become effective forty-five days after they are filed. As a partial counterbalance to this liberalized approach, conference agreements<sup>1</sup> are required by section 5(b) of the Act, 46 U.S.C. app. 1704(b), to include a number of procompetitive provisions, and the Commission may reject a conference agreement that does not meet this standard. Especially noteworthy is the requirement that all conference agreements must clearly state that any member line may take "independent action" on any rate or service item required to be filed in a tariff with the Commission; this empowers any member line to set an individual rate below (or above) the conference rate, without having to obtain approval of the rate from the other member lines. The conference is then required to publish the independent action rate in its conference tariff upon no more than ten days' notice.

The Commission may also prescribe the "form and manner" in which agreements of any kind must be filed, and may reject an improperly drafted agreement. In addition, the Commission may request information and documents in connection with a newly filed agreement and, if its demand is not "substantially" met, may seek a delay in the agreement's effective date or other relief from the United States District Court for the District of Columbia.<sup>2</sup>

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<sup>1</sup> Under the 1984 Act, a conference is an association of ocean common carriers which engage in concerted activities and utilize a common tariff. Section 3(7), 46 U.S.C. app. 1702(7).

<sup>2</sup> Sections 6(d) and (i) of the 1984 Act, 46 U.S.C. app. 1705(d) and (i).

The 1984 Act sets forth an extensive list of prohibited acts, barring many anticompetitive practices that previously had been outlawed under the broad "public interest" standard of section 15 of the 1916 Act. For example, section 10(b)(6) of the 1984 Act, 46 U.S.C. app. 1709(b)(6), carries forward section 15's prohibition of agreements that are unfair or unjustly discriminatory between shippers or ports. Sections 10(c)(1)-(3) and (5) of the 1984 Act, id. app. 1709(c)(1)-(3) and (5), prohibit boycotts, restrictions on technological innovations, predatory practices and the denial of reasonable freight forwarder compensation, all of which the Commission previously had found violated section 15.<sup>3</sup>

If the Commission has indications that an agreement may be operating in violation of the 1984 Act, it may institute an investigation of the agreement and its member lines. In addition, the Commission may ask any U.S. district court to temporarily enjoin the agreement while the investigation proceeds.<sup>4</sup> If the court should find that continued operation of the agreement would be inequitable, it can issue an order barring further effectiveness of the agreement until ten days after issuance of the Commission's final decision. If the Commission should find in its final decision that violations of the 1984 Act in fact occurred, it may "disapprove, cancel or modify" the agreement,<sup>5</sup> which would in

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<sup>3</sup> See S. Rep. No. 3, 98th Cong., 1st Sess. 35-37 (1984).

<sup>4</sup> Section 11(h)(1) of the 1984 Act, 46 U.S.C. app. 1710(h)(1).

<sup>5</sup> Section 11(c) of the 1984 Act, 46 U.S.C. 1710(c).

effect supersede the existing court injunction. In addition, the Commission may assess fines against the agreement member lines.<sup>6</sup>

The other procedure provided by the 1984 Act by which the Commission can prevent an agreement from going into effect, or prevent further operation of an existing agreement, is set forth in section 6(g). This provision authorizes the Commission to seek an injunction in the U.S. District Court for the District of Columbia against an agreement that is "likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost." 46 U.S.C. app. 1705(g). A proceeding under section 6(g) does not involve questions of discrimination or unfairness, which are covered by the section 10 prohibited acts, nor does it involve questions of statutory violations or fines against the carriers. Section 6(g) was meant to provide a way of dealing with "unusual or severe cases not addressed by other prohibitions in the Act,"<sup>7</sup> and the only remedy available under the provision is an injunction against the agreement itself.

B. The Commission's Agreement Program

The Commission's procedures for evaluating and monitoring carrier agreements reflect the new responsibilities and limitations imposed by the 1984 Act. When an agreement is first filed, its provisions are immediately reviewed to ensure that they contain the 1984 Act's mandatory provisions and do not run afoul of the

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<sup>6</sup> Section 13(a) of the 1984 Act, 46 U.S.C. 1712(a).

<sup>7</sup> H.R. Rep. No. 600, 98th Cong., 2d Sess. 37 (1984).

prohibited acts sections. In the ordinary case, that is a one-time process and does not entail ongoing periodic review.

An agreement's effect on shippers, ports and maritime commerce is a different matter. An agreement of significant anticompetitive dimensions -- for example, a large market share combined with authority to fix rates and control service contracts -- poses potential dangers of unlawful activities and unreasonable rate increases or service reductions both when it is first filed and for as long as it remains in effect. Thus, under the new regulatory framework established by the 1984 Act, the role of the Commission as a monitoring and surveillance agency was greatly enhanced. In discharging that responsibility, the Commission cannot merely examine an agreement's provisions; rather, it must continually gather, review and interpret data on the impact of the agreement on U.S. foreign commerce. As for the source of such information, the 1984 Act removed the burden of proof in agreement investigations from the carriers, but did not alter the accuracy of the Commission's 1966 observation in Mediterranean Pools Investigation that the primary source for information on the operation of an agreement is the carriers that are the parties to the agreement.

At present, the Commission has regulations in place that obtain information from carriers about their agreements in two principal ways. All new agreements, unless specifically exempted,<sup>8</sup>

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<sup>8</sup> See 46 CFR 572.302-11.



and all "significant modifications" to existing agreements<sup>9</sup> must submit an information form<sup>10</sup> which, at a minimum, requires the parties to state the full name of the agreement (Part I); whether the agreement authorizes collective rate fixing (Part II(A)), cargo or revenue pooling (Part II(B)), or the establishment of a "joint service/consortium" arrangement (Part II(C)); whether the agreement was entered into as a response to any law or other official action by a foreign government (e.g., cargo reservation laws) (Part VI); and persons who can be contacted by the Commission's staff for further information if necessary (Part IX). If an agreement does authorize collective rate fixing, cargo or revenue pooling, or the establishment of a "joint service/consortium" arrangement, the parties are required additionally to provide market share and cargo carryings information for the previous year (Part III), to identify

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<sup>9</sup> "Significant modifications" are presently defined at 46 CFR 572.403(a)(3) to include . . .

. . . significant changes in the geographic scope of conference or pooling agreements which expand the scope to cover additional foreign countries or U.S. port ranges, including initial conference intermodal authority, or the extension of the scope of a joint service agreement to ports outside the scope of the existing joint service agreement currently served by two or more of the parties; additions to the number of parties in pooling or joint service agreements; significant reductions in service levels; significant changes in pool penalty provisions or carrying charges; and changes in cargo categories or descriptions that result in a significant increase in the amount of cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines.

<sup>10</sup> The current information form is published as Appendix A to Part 572 of the Commission's regulations, following 46 CFR 572.991.

the nature and extent of any competition on the trade (Part IV), and to identify any reports, studies or other research on competitive conditions in the trade (Part VIII). Agreements that authorize service rationalization are required to provide information on any changes in port calls or reductions in service that will result from the agreement within the next twelve months (Part V). In addition, filing parties may voluntarily describe the benefits that they anticipate will accrue from the agreement to themselves (such as improved operational efficiencies) or to shippers and U.S. commerce (such as improved service) (Part VII).

The data and information shown on an agreement's information form are the basis for pre-implementation review of an agreement under section 10 and section 6(g) of the 1984 Act, unless additional information is obtained as a result of a formal request issued under section 6(d),<sup>11</sup> in which case the agreement's effective date is delayed until the 45th day after the Commission receives the information requested, so that pre-implementation review can include the additional material.

In addition, parties to effective agreements are required to file minutes of meetings of the carriers or other persons authorized to take action on behalf of the carriers, which include reports on shippers' requests and complaints and reports on consultations with shippers and shippers' associations.<sup>12</sup>

C. Areas of Needed Improvement

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<sup>11</sup> N. 2, supra, and accompanying text.

<sup>12</sup> 46 CFR 572.702-703.

While the information-gathering processes for agreements established by the Commission immediately after passage of the 1984 Act have served their purpose adequately, the increasingly comprehensive and complex agreements filed in recent years indicate a need for updating and augmentation. Agreements with multi-country geographic ranges are now common. New devices and arrangements for dealing with excess capacity have appeared. Rate discussion agreements between conference and nonconference lines have become more prevalent, and such arrangements have not been required to include the procompetitive provisions applicable to conferences. Networks of vessel and space charter agreements covering a multitude of trade lanes have been established, and some of those agreements operate within larger conference agreements.

In addition, some of the provisions of the current information form have not produced much useful information. It appears that these provisions either have become outdated or, with the benefit of hindsight, were not sufficiently relevant to the Commission's pre-implementation review of a new agreement under the standards of the 1984 Act. This is particularly true of Part VI, which concerns whether the agreement was entered into as a response to a law or other action by a foreign government, and Part VII, which allows the carriers to describe the expected benefits of the agreement if they wish. Further, the activity queries in Part II of the current form which, if answered in the affirmative, trigger the further requirements of Parts III, IV and VIII, do not reach rate discussion agreements between independent lines or between

conference lines and independents, nor do they reach agreements to discuss costs or exchange cost information. These types of agreements do not directly authorize rate setting but nonetheless have a direct and substantial impact on rate competition, as discussed further below.

Due to the limitations of the current post-implementation reporting requirements, monitoring of effective agreements at present depends primarily on other reports that are not required by regulation, but rather must be negotiated as to content and frequency by the Commission's staff with the carrier parties during the initial review period. Such reports produce data bearing on the carriers' concerted practices and operating results, such as percentage of capacity being utilized by shippers and average gross revenue per twenty-foot-equivalent container unit ("TEU") of cargo. Major agreements that currently are subject to negotiated reporting requirements include the Trans Atlantic Conference Agreement, the Transpacific Stabilization Agreement and the Inter-American Discussion Agreement.

Obtaining data about the economic impact of a effective agreements through ad hoc negotiations during the initial review period has been a flawed procedure. Carrier representatives have shown good will and substantial cooperation, but both they and the Commission's staff are inevitably hampered by the 1984 Act's strict time limits for agreement processing. Once an agreement has gone into effect, the Commission can always issue an order under section 15 of the 1984 Act to obtain information from the member

carriers,<sup>13</sup> but that power is better suited for special circumstances than for day-to-day regulation. In sum, neither the current practice of negotiating ad hoc reports nor the authority set forth in section 15 is an efficacious method of achieving consistent and predictable oversight of significant carrier agreements after they have gone into effect.

D. The Proposed Rule

The Commission addresses the concerns discussed above by proposing new regulations that are designed to elicit more detailed and specific information on ocean carrier agreements in a more structured and comprehensive manner. The proposed rule formulates a sliding scale of information demands for three classes of agreements, "Class A," "Class B" and "Class C." Where an agreement fits on the scale depends on the activities it authorizes and the parties' combined market share. These criteria are discussed further below. An agreement that does not authorize any of the specified activities would still be required by law to be filed

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<sup>13</sup> Section 15(a) states:

The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission.

with the Commission (unless it qualifies for one of the existing exemptions), but would not have any information form or reporting obligations.

For an agreement fitting into one of the three covered classes, the proposed rule has the following important features:

- A revised information form that would accompany the agreement when it is first filed, requiring the submission of specific data on the agreement member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement.

- If the agreement goes into effect, additional provisions requiring the member lines to submit reports on their operations on a regular and ongoing basis. Thus, the proposed rule would establish reporting requirements as Commission regulations that would have the status of agency public policy and could be enforced by Commission or court sanctions if necessary.

- Linkage between the information form and the subsequent reports. Aside from some activities that are relevant only to effective agreements (such as independent rate actions), the reporting requirements track the subject areas of the information form. This would enable the Commission to compare the carriers' operations and economic results before and after their agreement went into effect.

1. Classification of agreements: the six "Class A/B" activities

"Class A" and "Class B" agreements permit the same kinds of activities; the difference between them is market share. An

agreement is a "Class A/B" agreement if it authorizes any one of the following six activities:

- **Ratemaking.** This specifically includes not only traditional conference agreements, under which a group of lines agree upon fixed rates and practices and are bound to them under a common tariff, but also agreements under which non-conference lines meet among themselves or with a conference to discuss rates, or to discuss and agree upon rates on a "non-binding" basis. The latter types of agreements have become increasingly common, and their presence in a trade raises serious concerns about the true level of competition since they involve discussions and agreements about rates between non-conference lines or between a conference and its non-conference competitors. These concerns are not necessarily lessened by the fact that any agreement reached with regard to a particular rate would not bind the carriers to adhere to the rate; a shipper in the trade seeking to negotiate a rate with a carrier would still be faced with an arrangement that unilaterally brings outside carriers into the rate negotiation process and potentially limits the shipper's ability to negotiate the best possible rates for its cargo.

The "ratemaking" criterion is met if the agreement authorizes its carrier members to (1) agree on a binding basis under a common tariff, (2) agree on a non-binding basis, or (3) discuss any kind of basic linehaul rate -- including port-to-port rates, independent action rates, overland rates, minilandbridge rates, interior point intermodal rates, proportional rates, through rates, joint rates,

minimum rates, volume rates, joint time/volume rates, project rates, freight-all-kinds rates, volume incentive programs, service contract rates, loyalty contract rates, rates on commodities exempt from tariff filing, and so forth -- or any kind of ancillary charge or allowance that affects the total transportation cost to the shipper. Those include surcharges, arbitraries, currency adjustment factors, terminal handling charges, pickup and delivery charges, demurrage, absorption and equalization allowances, and so forth.

On the other hand, in the interest of balance and restraint, the proposed rule does not treat as "ratemaking" agreements those agreements that concern how rates are collected from shippers -- for example, credit conditions and the handling of delinquent accounts -- but do not concern the level of the rates themselves, or those agreements that concern charges or payments to persons other than shippers, e.g., inland divisions of through rates, brokerage, freight forwarder compensation, employment of neutral bodies for self-policing purposes, or development of electronic cargo information systems.

● Discussion or exchange of vessel-operating cost data. The Commission has received a number of agreements that do not authorize rate discussions or agreements of any kind, but do authorize discussion of or exchange of cost data among the member carriers. The antitrust laws have been applied against such arrangements in other industries, on the theory that the sharing of pricing information can have a significant impact on price



competition.<sup>14</sup> The most significant costs for ocean common carriers are vessel-operating costs, which the proposed rule defines to include wages of officers and crew, fringe benefits, consumable stores, supplies and equipment, maintenance and repair, insurance, vessel fuel, and bareboat charter hire.<sup>15</sup> The 1984 Act allows carriers to enter into agreements to discuss and exchange information about these costs, but the Commission believes that they should be subjected to the same degree of scrutiny as their close cousins, rate discussion agreements. On the other hand, again in the interest of balance and restraint, the "costs" criterion does not apply to discussion of other types of expense that are less important for setting rates (for example, terminal costs). In order to make this distinction effective, agreements seeking to authorize discussion or exchange of cost data must specify whether that authority includes any of the vessel-operating costs.

● Joint service, which is defined by the Commission's regulations as . . .

. . . an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating

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<sup>14</sup> E.g., Sugar Institute, Inc. v. United States, 297 U.S. 553 (1936); American Column & Lumber Co. v. United States, 257 U.S. 377 (1921).

<sup>15</sup> See 46 CFR 232.5(E)(1)(ii).

name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

46 CFR 572.104(n). While the introduction of a joint service into a trade by outside lines may increase the level of competition and the range of services available for shippers, there can be negative effects on competition and service if the joint service is formed by lines that up to that point had been competing in the trade, and especially if the new entity would have substantial market power.

- "Capacity management" or "capacity regulation". This relatively new technique for dealing with overtonnaging and depressed rates limits the availability of vessel space to shippers but does not reduce the real capacity of the carriers. Therefore, such programs have the potential to perpetuate economic inefficiencies and unnecessary costs for shippers, particularly if they remain in place beyond short-term cargo declines or surges in capacity. Agreements authorizing such programs have sufficiently serious ramifications under the 1984 Act to warrant thorough monitoring.

- Regulation or discussion of service contracts. Most agreements engaging in this activity are conference agreements, which would already be covered by the "ratemaking" criterion discussed above. However, agreements among non-conference lines may include authority to confer and to reach "non-binding" agreements on service contract terms, and such authority may well diminish price and service competition.

● Pooling, which is defined by the Commission's regulations as . . .

. . . an agreement between ocean common carriers which provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

46 CFR 572.104(w). While such agreements are not as common as they once were, they are severely anticompetitive by nature and must be closely regulated when they do appear.

2. Classification of agreements: the importance of market share

The proposed rule requires any agreement that authorizes one or more of the six "Class A/B" activities to be accompanied, upon its initial filing, with an information form showing its parties' market shares both for the entire agreement and also in each of the sub-trades within the overall scope of the agreement, during the most recent calendar quarter for which complete data are available. "Sub-trade" is defined as all liner movements between each U.S. port range (Atlantic, Gulf and Pacific) and each foreign country within the overall scope of the agreement. For example, an agreement with an overall scope of U.S. Pacific Coast to the Far East would have sub-trades of U.S. Pacific Coast to Japan, U.S. Pacific Coast to Taiwan, and so forth.

An agreement that authorizes at least one of the six "Class A/B" activities and holds market shares of 50 percent or more in half or more of its sub-trades is classified as a "Class A"

agreement under the proposed rule.<sup>16</sup> The parties to such an agreement are required to submit extensive historical data on the initial information form and, if the agreement goes into effect, to submit detailed quarterly reports on their operations under the agreement. These requirements are discussed in detail below. An agreement that authorizes at least one of the six activities, but did not hold market shares of 50 percent or more in at least half of its sub-trades, is classified as a "Class B" agreement. It would file the same information form as a "Class A" agreement but, if it went into effect, would have significantly lighter reporting obligations, as also discussed below. It should be noted that the classification of an agreement as "Class A" would not be permanent; the agreement's ongoing reporting obligations would include market share data, and at the beginning of each calendar year, the agreement's sub-trade market shares during the most recent calendar quarter for which complete data are available would determine whether it would remain under "Class A" reporting obligations for the upcoming year.

Market share measures an agreement's potential for abuse of economic power and unreasonable or discriminatory price and service practices. The break point of 50 percent in at least half of the sub-trades was chosen in the belief that an agreement that is a

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<sup>16</sup> For example, if an agreement with ten sub-trades reported that it had market shares of 50 percent or more in five or more sub-trades, it would be a "Class A" agreement. By using that methodology rather than average market share, the proposed rule seeks to focus on those agreements with significant market power spread through at least half of their total geographic scope.

relatively minor presence in a majority of its sub-trades -- that is, a "Class B" agreement -- is unlikely to be able to impose unreasonable or unfair rates or practices regardless of what it authorizes its parties to do, and does not require extensive gathering of information about its operation. While commenters on the proposed rule are free to argue for a different break point, it should be noted that an important feature of the proposed rule is that the market share calculation for rate discussion agreements and "non-binding" rate agreements adds the market shares held by the non-conference lines to those held by the conference lines for purposes of determining whether such an agreement should be classified as "Class A" or "Class B".

The new focus on sub-trades results from the Commission's belief, resulting from the agency's experience over the ten years since passage of the 1984 Act, that economic analysis of an agreement is facilitated and acquires depth of understanding if it is done according to the agreement's smaller components. This is particularly true since, as noted above, the Commission is now seeing more and more agreements that have multi-coast or even multi-continent geographic ranges. Further, in some of the more geographically fragmented parts of the world, such as the Far East and the South Pacific, sub-trades can constitute separate and cloistered markets. Agreements that serve a comparatively unified landmass, such as Europe, might still implement practices that differ from area to area within the general market. These factors all argue for information-gathering systems that acquire data

relevant to an agreement's sub-trades, rather than only the market defined by the agreement's total scope.<sup>17</sup> Accordingly, the information (besides market share) sought by the proposed rule for "Class A" and "Class B" agreements is, for the most part, concerned with the agreements' sub-trades.

It should be stated at this juncture that the proposed rule includes a procedure whereby the Commission may grant a waiver from full compliance with the rule's requirements, if a group of carriers applies for and justifies such relief. A waiver could apply to any part of the rule, including the requirement that data be reported by individual country sub-trades. For example, an agreement might be permitted to report by a multi-country region rather than by individual countries, if it could show that the major moving commodities moving into or out of a particular group of countries did not vary much country by country, and so regional data would provide a reasonably accurate and complete description of the trades with those countries. The waiver procedure could also be used to allow conferences made up of relatively small carriers serving a relatively small trade to submit post-implementation monitoring reports at wider intervals (for example, once a year). The waiver provisions specifically state that the Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver.

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<sup>17</sup> This approach also allows for the possibility that Commission or court sanctions against an agreement could prevent an agreement only from operating in a particular sub-trade, rather than from operating at all.

3. "Class A" agreements under the proposed rule

The information form for a "Class A" agreement begins by requiring a listing of all effective agreements covering all or part of the geographic scope of the proposed agreement, whose parties include one or more of the parties to the proposed agreement. This provision is designed to ensure that the Commission has accurate information regarding the recent trend toward networks of agreements connected by common parties. Next, the form requires an identification of all "Class A/B" activities that the agreement seeks to authorize.

After obtaining the market share data discussed above, the information form then inquires into the recent agreement-wide cargo carryings and revenue results of each of the carriers that would now join together into the agreement. Otherwise, the information form focuses primarily on the state of affairs in each of the agreement's sub-trades before the agreement was filed. This is done by reference to the major commodities moving to and from the United States in each sub-trade.

Using the actual commodities moving under an agreement as the chief frame of regulatory reference is an important feature of the proposed rule, and represents a significant departure from current practice. At present, the information obtained by the Commission on carrier rate and service practices via the monitoring reports submitted for certain major agreements does not describe the cargo being transported, and is stated in the aggregate (for example, total number of service contracts executed) or as broad averages

(for example, average revenue per TEU of all cargoes). In contrast, the proposed information form, while continuing to require the submission of aggregate data in certain areas, mainly requires carriers to identify the commodities that have made up the bulk of their cargo in each sub-trade and then to submit data on the price and service practices they have applied to each of those commodities. With this information in hand, the Commission will have a reasonably comprehensive summary of pre-agreement rate and service practices in each sub-trade covered by the new agreement, as well as in the agreement's entire geographic scope. If the agreement is permitted to go into effect, that summary will serve as a baseline for analyzing the corresponding information later obtained through the post-implementation reports.

In sum, the proposed rule both changes the orientation of agreement review to that of the cargo being affected, and also calls for more refined and differentiated data from the carriers. These reforms should provide the Commission with improved and more useful indicators of the potential or actual impact of an agreement on the needs of shippers for good service at reasonable rates, and in particular whether the agreement might cause or has caused unfair or unreasonable conditions for specific commodities, classes of shippers, or geographic areas. It should be noted that, while the proposed rule is constructed around the major moving commodities in each sub-trade, nothing prevents the Commission from taking appropriate action if it receives information that an



agreement is harming the fair and reasonable transportation of a relatively minor commodity.

The information form also inquires into the effect of the agreement on ports within its geographic range; it should be noted that it is unnecessary to segregate data on port calls by sub-trades. In addition, the information form imposes special requirements on any "Class A" agreement that authorizes "capacity management" or "capacity regulation." Because such programs are designed to address problems of excess capacity, the information form inquires into each agreement member line's recent capacity utilization experience within the geographic service area to be covered by the proposed program and its initial capacity level under the program. These data are to be provided within a "geographic service area" because a capacity management or regulation program that is part of a larger agreement can be designed to cover less than the entire geographic scope of the agreement. This section of the form also requires the submission of any reports or studies dealing with capacity utilization and related topics, but only to the extent that such documents were both recently prepared and shared among the agreement lines, and thus may have influenced the formation of the capacity management program.

If the new agreement were permitted to go into effect, then the reporting requirements for "Class A" agreements would become applicable. Changes in membership in other agreements would be reported, and the parties' market shares would continue to be

tracked by entire agreement geographic scope and by sub-trade. Otherwise, the reporting requirements would mirror the information form in order to provide "before and after" depictions of the trade, with some additional provisions that can apply only to an effective agreement. For example, the special provisions of the information form applicable to a capacity management program would be expanded to carefully monitor the actual operation of the program. In addition, a new section entitled "Independent Rate Actions" would apply to "Class A" conference agreements and would require:

For each sub-trade within the scope of the agreement, and for each of the leading commodities . . . , and for each party, state the number of independent rate actions taken during the calendar quarter that were applicable to that commodity moving in that sub-trade, and the total number of TEUs of that commodity covered by the independent actions. Also, state the name of each shipper for whom an independent rate was taken on that commodity during the calendar quarter, and state whether the shipper was a beneficial cargo owner, a non-vessel-operating common carrier, or a shippers' association.

This provision would allow the Commission to monitor the level of independent rate activity (or the lack of such activity) on specific commodities, and to take appropriate action immediately if it appears that certain commodities or types of shipper are receiving more rigid rate treatment than others.

4. "Class B" agreements under the proposed rule

As already stated, the proposed rule prescribes the same information form for "Class B" agreements as for "Class A" agreements. This establishes the same pre-agreement baseline as is done for "Class A" agreements. However, assuming the "Class B"

agreement were allowed to go into effect, the reporting requirements are limited to quarterly updates on market share, agreement-wide cargo and revenue results, membership in other agreements, and changes in port service. The agreement would be monitored by the Commission, particularly the sub-trades where the agreement holds more than 50 percent of the market, and if there were indications of possible rate or service problems in a sub-trade, further information would be obtained -- by either informal negotiation or a section 15 order -- and compared against the original baseline data to determine whether further action was necessary.

5. "Class C" agreements under the proposed rule

An agreement that authorizes service rationalization, such as space charters, coordination of service frequency and port rotations, and coordination of the size and capacity of vessels to be deployed by the parties, but does not authorize "capacity management" or "capacity regulation" (or any of the other five "Class A/B" activities), is a "Class C" agreement. Although such agreements have rarely presented serious regulatory concerns, some oversight is necessitated by section 6(g)'s admonition against agreements that cause unreasonable reductions in service. For a "Class C" agreement, the proposed rule provides for information form and reporting requirements limited to membership in other agreements and the level of service at the ports within the agreement's overall scope. Those provisions should provide the Commission with adequate warnings in case service rationalization

reaches the point where a port, and the shippers which use that port, begin to suffer.

6. Other amendments

The proposed rule contains a number of other amendments to the Commission's existing regulations in 46 CFR Part 572. For the most part, these amendments are not substantive and are designed to make the existing regulations consistent with the proposed rule, to eliminate certain outdated regulations, or to reorganize certain subparts of the existing regulations. They include the following:

- In section 572.104, new definitions are added for such terms as "capacity management or capacity regulation agreements," "monitoring report," "rate" and "vessel-operating costs." In addition, the present definition of a joint service is revised to eliminate the reference to "consortium," which is a term not defined by the 1984 Act and could include a number of commercial relationships besides joint services.

- In Subpart C, the exemptions of certain kinds of agreements are revised to eliminate unnecessary references to "Information Form" requirements. These changes have no effect on the exemptions themselves.

- Subpart D is revised to include existing Subpart E, so that all regulations governing the content and organization of filed agreements will be contained within one subpart. Also, proposed section 572.401(a)(2) states that five copies of the new Information Form must be filed along with a new agreement; this is the minimum number of copies that will be needed by the Commission

in order to review and process an agreement. Subparagraph (h) of present section 572.402 is deleted as no longer necessary. Also, the proposed rule eliminates the requirements in current section 572.403(a)(2)-(3) that Information Forms must accompany "significant modifications" to effective agreements; they will no longer be necessary since the agreements addressed by those regulations will in all likelihood be subject to ongoing reporting requirements. Also, the standards presently set forth in section 572.404 for granting a waiver are revised to remove the requirement that the applicant show that "beneficial results" will occur if the waiver is granted, and instead to require that the applicant show that granting the waiver will not impair effective regulation by the Commission, consistent with the language of section 16 of the 1984 Act, 46 U.S.C. app. 1715. Similar language is used in the proposed rule's other waiver provisions in revised Subparts E and G.

- Section 572.608(b)(2), which sets forth an exception to the confidentiality of submitted material, is revised to more closely reflect the language of section 6(j) of the 1984 Act, 46 U.S.C. app. 1705(j). Similar language is used in the proposed rule's provision on confidentiality in revised Subpart G.

#### 7. Carrier costs and profits

The Commission's obligation under section 6(g) of the 1984 Act to police against agreements that may cause, or have caused, unreasonable increases in transportation rates, and the 1984 Act's purpose of providing an efficient and economic transportation

system in the ocean commerce of the United States, 46 U.S.C. app. 1701(2), raise the question whether these policies can or should be pursued by monitoring the costs and/or profitability of the carriers to a particular agreement. The proposed rule does not include provisions on carrier costs or profitability, but the Commission wishes to solicit comments on the lawfulness and feasibility of such provisions. Commenters should address whether such provisions would be inconsistent with Congress's directive that "[t]he determination whether an agreement is likely to produce an 'unreasonable increase in the price of transportation' does not authorize the FMC to engage in the type of ratemaking analysis undertaken by regulators of public utilities or as applied in the domestic offshore trades." H.R. Rep. No. 600, 98th Cong., 2d Sess. 35 (1984). That aside, commenters should also address how such provisions might be structured, particularly given the proposed rule's focus on individual country sub-trades; whether costs and/or profitability under a particular agreement can be measured accurately, particularly if the carriers to the agreement have other operations elsewhere; and whether arguments that an agreement is necessary to control costs or to improve profits are better explored in the context of an investigation of a particular agreement, rather than made the subject of regulations applicable to broad classes of agreements.

8. Effective agreements under the proposed rule

The Commission's present intentions regarding the treatment of effective agreements under the regulations proposed in this

proceeding are as follows. Upon publication of a final rule, the regulations would become effective immediately for new agreements, which thus would be required to comply with the revised Information Form provisions. However, the proper application of the new regulations to agreements already in effect could not be determined immediately, because the market share data necessary to separate Class A/B agreements into Class A and Class B will not be readily available.

Accordingly, the Commission intends to stay application of the final rule to effective agreements. The Commission then will direct all existing Class A/B agreements to submit reports under section 15 of the 1984 Act that would include all the information demanded of new Class A/B agreements under the Information Form regulations, including market share data. Upon review of these reports, those agreements will be appropriately classified into Class A or Class B, the stay of the final rule will be lifted, and the orderly filing of the regular monitoring reports (including those applicable to Class C agreements) will begin. The initial section 15 reports will provide baselines (albeit not pre-implementation baselines) against which the subsequent reports will be compared as part of the continuous monitoring of each agreement. For those agreements already in effect that are subject to reporting requirements negotiated by the Commission's staff, those requirements will be superseded by the final rule.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that

this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The ocean carriers affected by the rule are not "small organizations" or "small governmental jurisdictions" as defined by 5 U.S.C. 601 and, as large and predominantly foreign-based enterprises, are not "small business concerns" as defined by 15 U.S.C. 632 and regulations issued thereunder.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511), as amended. The incremental public reporting burden for this collection of information is estimated to range from an average of 46 hours to 144 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, D.C. 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure; maritime carriers; reporting and recordkeeping requirements.



Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, 6, 10, 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1703, 1704, 1705, 1709, 1714 and 1716, Part 572 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 572 -- AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS  
SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for Part 572 continues to read as follows:

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1717.

2. In section 572.103, the first sentence of paragraph (a), the first two sentences of paragraph (b), the first sentence of paragraph (c), and the second sentence of paragraph (d) are revised; in paragraph (e), the third sentence is revised, the last sentence is revised, and a new sentence is added as follows:

**§572.103 Policies.**

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. \* \* \*

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those classes of agreements which must be accompanied by information submissions when they are first filed, and sets forth the kind of information

for each class of agreement which the Commission believes relevant to that review. \* \* \*

(c) In order to further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. \* \* \*

(d) \* \* \* In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing requirements of this part.

(e) \* \* \* This, however, requires greater monitoring of agreements after they have become effective, to assure continued compliance with all applicable provisions of the Act. \* \* \* Only that information which is necessary to assure that Commission monitoring responsibilities will be fulfilled is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

\* \* \* \* \*

3. In section 572.104, paragraph (e) is redesignated (f) and a new paragraph (e) is added, paragraph (f) is redesignated (g) and the last sentence thereof is revised, paragraphs (g) and (h) are redesignated (h) and (i), paragraph (i) is redesignated (j) and is revised, paragraphs (j), (k), (l) and (m) are redesignated (k), (l), (m) and (n), paragraph (n) is redesignated (o) and the heading thereof is revised, paragraphs (o), (p), (q) and (r) are redesignated (p), (q), (r) and (s), paragraphs (s), (t), (u), (v),

(w) and (x) are redesignated (u), (v), (w), (x), (y) and (z) and a new paragraph (t) is added, paragraph (y) is redesignated (cc) and is revised, paragraphs (z), (aa), (bb) and (cc) are redesignated (dd), (ee), (ff) and (gg) and new paragraphs (aa) and (bb) are added, paragraph (dd) is redesignated as (hh) and the last sentence thereof is revised, paragraphs (ee) and (ff) are redesignated (ii) and (jj), and a new paragraph (kk) is added, as follows:

**§572.104 Definitions.**

\* \* \* \* \*

(e) *Capacity management or capacity regulation agreement* means an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels. The term does not include sailing agreements or space charter agreements.

(f) \* \* \*

(g) *Conference agreement* \* \* \* The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) \* \* \*

(i) \* \* \*

(j) *Effective agreement* means an agreement approved pursuant to the Shipping Act, 1916, or effective pursuant to an exemption under that act, or effective under the Act.

(k) \* \* \*

(l) \* \* \*

(m) \* \* \*

(n) \* \* \*

(o) *Joint service agreement* \* \* \*

(p) \* \* \*

(q) \* \* \*

(r) \* \* \*

(s) \* \* \*

(t) *Monitoring report* means the report containing economic information which must be filed at defined intervals with regard to certain kinds of agreements that are effective under the Act.

(u) \* \* \*

(v) \* \* \*

(w) \* \* \*

(x) \* \* \*

(y) \* \* \*

(z) \* \* \*

(aa) *Rate*, for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(bb) *Rate agreement* means an agreement between ocean common carriers which authorizes agreement upon, on either a binding basis

under a common tariff or on a non-binding basis, or discussion of, any kind of rate.

(cc) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity management or capacity regulation agreements.

(dd) \* \* \*

(ee) \* \* \*

(ff) \* \* \*

(gg) \* \* \*

(hh) *Space charter agreement* \* \* \* The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity management or capacity regulation as used in this subpart.

(ii) \* \* \*

(jj) \* \* \*

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity

insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and bareboat charter hire expenses.

4. In section 572.301, paragraph (b) is amended by deleting the words "Information Form" and the comma immediately thereafter.

5. In section 572.302, paragraph (b) is amended by deleting the words "Information Form" and the comma immediately thereafter.

6. In section 572.303, paragraph (b) is amended by deleting the words "and Information Form."

7. In section 572.304, paragraph (b) is amended by deleting the words "and Information Form."

8. In section 572.305, paragraph (b) is amended by deleting the words "and Information Form."

9. In section 572.306, paragraph (b) is amended by deleting the words "and Information Form."

10. In section 572.308, paragraph (b) is amended by deleting the words "and information form."

11. In section 572.309, paragraph (a) is amended by deleting the words "Information Form" and the comma immediately thereafter.

12. In subpart D, the heading thereof is amended, as follows:

**Subpart D -- Filing of Agreements**

13. In section 572.401, the heading thereof and paragraphs (a) (2), (c), (d) and (e) are revised to read as follows:

**§572.401 General requirements.**

(a) \* \* \*

\* \* \* \* \*

(2) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and

\* \* \* \* \*

(c) Any agreement which does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with §572.601.

(d) Assessment agreements shall be filed and shall be effective upon filing.

(e) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

14. In section 572.402, paragraph (e)(2) is amended by changing the references to "§§ 572.501 and 572.502" to "§§572.403 and 572.404," paragraph (f) is amended by changing the references to "§§ 572.501(b)(3), 572.501(b)(6) and 572.502(a)(1)" to "§§ 572.403(b)(3), 572.403(b)(6) and 572.404(a)(1)," and paragraph (h) is removed.

15. Section 572.405 is removed and section 572.403 is redesignated 572.405 with paragraphs (a) and (g)(3) revised as follows, and section 572.501 is redesignated 572.403 with paragraphs (a) and (b) amended by changing the references to "§572.502" to "§572.404":

**§572.405 Modifications of agreements.**

\* \* \* \* \*

(a) Agreement modifications shall be: filed in accordance with the provisions of 572.401 and in the format specified in 572.402; with the content and organization specified in 572.403 and 572.404 and in accordance with this section.

\* \* \* \* \*

(g) \* \* \*

\* \* \* \* \*

(3) The filing of a republished agreement, as described in paragraph (g)(2) of this section, may be accomplished by filing only an executed original true copy. No Information Form requirements apply to the filing of a republished agreement.

16. Section 572.406 is redesignated 572.407 and section 572.404 is redesignated 572.406 and revised as follows, and section 572.502 is redesignated 572.404 with paragraphs (a) and (b)(1) amended by changing the references to "572.501" to "572.403":

**§572.406 Application for waiver.**

(a) Upon a showing of good cause, the Commission may waive the requirements of §§572.401, 572.402, 572.403, 572.404 and 572.405.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state: (1) the specific provisions from which relief is sought; (2) the special circumstances requiring the requested relief; and (3) why granting the requested waiver will not substantially impair effective regulation of the agreement.

17. A new Subpart E is added, as follows:



**Subpart E -- Information  
Form Requirements**

**§572.501 General requirements**

(a) Certain agreements must be accompanied, upon their initial filing, with an Information Form setting forth information and data on the agreement member lines' prior cargo carryings, revenue results and port service patterns.

(b) The filing parties to an agreement subject to this subpart shall complete and submit an original and five copies of the applicable Information Form at the time the agreement is filed. Copies of the applicable Form may be obtained at the Office of the Secretary or by writing to the Secretary of the Commission.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) The Information Form for a particular agreement may be supplemented with any other information or documentary material.

(e) The Information Form and any additional information submitted in conjunction with the filing of a particular agreement shall not be disclosed except as provided in §572.608.

**§572.502 Subject agreements.**

Agreements subject to this subpart are divided into two classes, Class A/B and Class C. When used in this subpart:

(a) *Class A/B agreement* means an agreement that is one or more of the following:

- (1) A *rate agreement* as defined in §572.104(aa) and §572.104(bb);
- (2) A *joint service agreement* as defined in §572.104(o);
- (3) A *pooling agreement* as defined in §572.104(y);
- (4) A *capacity management or capacity regulation agreement* as defined in §572.104(e);
- (5) An agreement authorizing discussion or exchange of data on *vessel-operating costs* as defined in §572.104(kk); or
- (6) An agreement authorizing regulation or discussion of *service contracts* as defined in §572.104(dd).

(b) *Class C agreement* means an agreement that is one or more of the following:

- (1) A *sailing agreement* as defined in §572.104(cc); or
- (2) A *space charter agreement* as defined in §572.104(hh).

**§572.503 Information form for Class A/B agreements.**

This section sets forth the Information Form for Class A/B agreements, with accompanying instructions that are intended to facilitate the completion of the Form. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

INFORMATION FORM FOR CLASS A/B AGREEMENTS

*Instructions*

All agreements between ocean common carriers that are Class A/B agreements as defined in 46 CFR 572.502(a) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to each part of the Form. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

*Part I*

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.403.

*Part II*

Part II requires the filing party to list all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

*Part III(A)*

Part III(A) requires the filing party to indicate whether the agreement authorizes the parties to collectively fix rates under a common tariff, to agree upon rates on a non-binding basis, or to discuss rates. Such rate activities may be authorized by a conference agreement, an interconference agreement, an agreement among one or more conferences and one or more non-conference ocean

common carriers, or an agreement among two or more non-conference ocean common carriers.

*Part III(B)*

Part III(B) requires the filing party to indicate whether the agreement authorizes the parties to establish a joint service.

*Part III(C)*

Part III(C) requires the filing party to indicate whether the agreement authorizes the parties to pool cargo or revenues.

*Part III(D)*

Part III(D) requires the filing party to indicate whether the agreement authorizes the parties to establish capacity management or capacity regulation programs, whereby some part of the capacity of the parties' vessels is withheld from a specified transportation market.

*Part III(E)*

Part III(E) requires the filing party to indicate whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs, which include wages of officers and crew; fringe benefits; consumable stores; supplies and equipment; maintenance and repair; insurance; vessel fuel; and charter hire.

*Part III(F)*

Part III(F) requires the filing party to indicate whether the agreement authorizes the parties to regulate or discuss service contracts.

Part IV

Part IV requires the filing party to provide the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement, during the most recent calendar quarter for which complete data are available. *Sub-trade* is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

*Atlantic* -- Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

*Gulf* -- Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

*Pacific* -- Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa and Saipan.

The formula for calculating market share (in either the entire agreement scope or in a sub-trade) is as follows:

The total amount of cargo carried on each liner operator's liner vessels (in either the entire agreement scope or in the particular sub-trade) during the most recent calendar quarter for which complete data are available, divided by the total amount of cargo carried on all liner vessels (in either the entire agreement scope or in the particular sub-trade) during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

The amount of cargo is to be measured in TEUs. *Liner movements* is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Information Form.

#### Part V

Part V requires the filing party to state, for each agreement member line that served all or any part of the geographic area covered by the agreement during all or any part of the most recent 12-month period for which complete data are available, each line's total cargo carryings (measured in TEUs) within the geographic area, total revenues within the geographic area, and average revenue per TEU. The Information Form specifies the format in

which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

*Part VI*

Part VI requires the filing party to identify, for each sub-trade within the scope of the agreement, the top 10 commodities by cumulative TEUs carried by all the parties during the same 12-month period used in responding to Part V, or the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the 12-month period, whichever is greater. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

*Part VII*

Part VII addresses how each of the parties to the proposed agreement has carried each major commodity in each sub-trade, and the revenue results experienced by each party from its carriage of each commodity. The Information Form specifies the format in which the information is to be reported.

*Part VIII*

Part VIII is concerned with the levels of service at each port within the entire geographic scope of the agreement. The filing party is required to provide the number of calls at each port by each of the agreement lines over the 12-month period used in responding to Parts V, VI and VII, and also to indicate any change in the nature or type of service to be effected immediately by the agreement.

*Part IX*

Part IX is required to be completed only where the agreement authorizes *capacity management* or *capacity regulation* as defined by 46 CFR 572.104(e). The filing party is required to state the total TEU capacity provided by each party in the geographic service area covered by the capacity management or capacity regulation program during the same 12-month period used in responding to Parts V, VI, VII and VIII, the number of those TEUs that were utilized, and each party's initial capacity commitment or allocation under the program. Where the capacity management or capacity regulation program covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately. Copies of specified kinds of reports must also be provided.

*Part X(A)*

Part X(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

*Part X(B)*

Part X(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

*Part X(C)*

Part X(C) requires that the filing party sign the Information Form and certify that the information in the Form and all



attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

**FEDERAL MARITIME COMMISSION**

*Information Form For Certain Agreements  
By Or Among Ocean Common Carriers*

Agreement Number \_\_\_\_\_  
(Assigned by FMC)

Part I Agreement Name: \_\_\_\_\_

*Part II Other Agreements*

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

*Part III Agreement Type*

(A) *Rate Agreements*

Does the agreement authorize the parties to collectively fix rates on a binding basis under a common tariff, or to agree upon rates on a non-binding basis, or to discuss rates?

Yes  No

(B) *Joint Service Agreements*

Does the agreement authorize the parties to establish a joint service?

Yes  No

(C) *Pooling Agreements*

Does the agreement authorize the parties to pool cargoes or revenues?

Yes  No

(D) *Capacity Management or Capacity Regulation*

Does the agreement authorize the parties to establish capacity management or capacity regulation programs?

Yes  No

(E) *Vessel-Operating Costs*

Does the agreement authorize the parties to discuss or exchange data on vessel-operating costs?

Yes  No

(F) *Service Contracts*

Does the agreement authorize the parties to discuss or agree on service contract terms and conditions, on either a binding or non-binding basis?

Yes  No

Parts IV, V, VI, VII, VIII and X must be completed for all agreements. If Part III(D) is answered "Yes," complete Part IX as well.

Part IV *Market Share Information*

Provide the market shares of all liner operators within the entire scope of the agreement and within each agreement sub-trade during the most recent calendar quarter for which complete data are available. The information should be provided in the format below:

MARKET SHARE REPORT FOR  
(indicate either entire agreement scope, or sub-trade name)  
TIME PERIOD

<u>AGREEMENT MARKET SHARE</u>	<u>TEUs</u>	<u>PERCENT</u>
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	<u>X,XXX</u>	<u>XX%</u>
Total Agreement Market Share	X,XXX	XX%
 <u>NON-AGREEMENT MARKET SHARE</u>		
Line X	X,XXX	XX%
Line Y	X,XXX	XX%
Line Z	<u>X,XXX</u>	<u>XX%</u>
Total Non-Agreement Market Share	X,XXX	XX%
Total Market	X,XXX	100%

Part V *Cargo and Revenue Results Agreement-Wide*

For each party that served all or any part of the geographic area covered by the entire agreement during all or any part of the most recent 12-month period for which complete data are available, state total cargo carryings in TEUs within the entire geographic area, total revenues within the geographic area, and average revenue per TEU. The same 12-month period must be used for each party. The information should be provided in the format below:

TIME PERIOD

<u>Carrier</u>	<u>Total TEUs</u>	<u>Total Revenues</u>	<u>Avg. Revenue per TEU</u>
A	--	\$ --	\$ --
B	--	\$ --	\$ --
C	--	\$ --	\$ --
etc.	--	\$ --	\$ --

Part VI *Leading Commodities*

For each sub-trade within the scope of the agreement, list the top 10 commodities by cumulative TEUs carried by all the parties during the same time period used in responding to Part V, or list the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the same 12-month period, whichever list is longer. The same 12-month period must be used in reporting for each sub-trade. The information should be provided in the format below:

TIME PERIOD

(same as that used in responding to Part V)

I. Sub-trade

- A. First leading commodity
- B. Second leading commodity
- C. Third leading commodity
- etc.

II. Sub-trade

- A. First leading commodity
- etc.

Part VII *Cargo and Revenue Results by Sub-Trade*

For the same time period used in responding to Parts V and VI, and for each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the

response to Part VI, and for each party, provide the following information:

- (1) Total TEUs carried port-to-port under tariff rates, and average gross revenue per TEU.
- (2) Total TEUs carried port-to-port under service contracts, and average gross revenue per TEU.
- (3) Total TEUs carried by intermodal service under tariff rates, and average gross revenue per TEU.
- (4) Total TEUs carried by intermodal service under service contracts, and average gross revenue per TEU.

The information should be provided in the format below:

TIME PERIOD  
(same as that used in responding to Part V)

I. Sub-trade A

A. First leading commodity

1. Carrier A

- (a) Port-to-port service under tariff rates
  - (1) Total TEUs of first leading commodity carried
  - (2) Average gross revenue per TEU
- (b) Port-to-port service under service contracts
  - (1) Total TEUs of first leading commodity carried
  - (2) Average gross revenue per TEU
- (c) Intermodal service under tariff rates
  - (1) Total TEUs of first leading commodity carried
  - (2) Average gross revenue per TEU
- (d) Intermodal service under service contracts
  - (1) Total TEUs of first leading commodity carried
  - (2) Average gross revenue per TEU

- 2. Carrier B
  - (a) etc.

- 3. etc.

B. Second leading commodity

- 1. Carrier A
  - (a) etc.

II. Sub-trade B

A. First leading commodity

- 1. etc.

Part VIII Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the same time period used in responding to Parts V, VI and VII. The information should be provided in the format below:

TIME PERIOD  
(same as that used in responding to Part V)

	<u>Port</u>	<u>Port</u>	<u>Port</u>	<u>Port</u>	<u>Port</u>
Carrier A					
Carrier B					
Carrier C					
etc.					

Also, for each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service to be effected immediately by the agreement, including base port designation and frequency of vessel calls.

Part IX Capacity Management or Regulation (if applicable)

For each party that served the geographic service area to be covered by the capacity management or capacity regulation program

during all or any part of the 12-month period used in responding to Parts V, VI, VII and VIII, provide the information indicated in the format below:

TIME PERIOD (same as that used in responding to Part V)		
Total TEU capacity provided in the <u>geographic service area</u>	Total TEUs <u>utilized</u>	Initial TEU capacity commitment/ <u>allocation</u>

Carrier A  
Carrier B  
Carrier C  
etc.

In addition, provide copies of any reports or analyses dealing with cargo space utilization, cargo level forecasts or new ship buildings, which were prepared during the 12 months prior to the filing of the agreement and circulated among at least two parties.

Part X

(A) *Identification of Person(s) to Contact Regarding the Information Form*

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(B) *Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).*

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Address \_\_\_\_\_
- (4) Telephone \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(C) *Certification*

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance

with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) \_\_\_\_\_  
Title \_\_\_\_\_  
Relationship with parties to agreement \_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

**§572.504 Information form for Class C agreements.**

This section sets forth the Information Form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Form. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

**INFORMATION FORM FOR CLASS C AGREEMENTS**

*Instructions*

All agreements between or among ocean common carriers that are Class C agreements as defined in 46 CFR 572.502(b) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to the Form. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

*Part I*

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.403.



*Part II*

Part II requires the filing party to list all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

*Part III*

Part III is concerned with the level of service at each port within the entire geographic scope of the agreement. The filing party is required to state the number of calls at each port by each of the parties over the most recent 12-month period for which complete data are available, and also to indicate any change in the nature or type of service to be effected immediately by the agreement.

*Part IV(A)*

Part IV(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

*Part IV(B)*

Part IV(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

*Part IV(C)*

Part IV(C) requires that the filing party sign the Information Form and certify that the information in the Form and all

attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

**FEDERAL MARITIME COMMISSION**

*Information Form For Certain Agreements  
By or Among Ocean Common Carriers*

Agreement Number \_\_\_\_\_  
(Assigned by FMC)

Part I Agreement Name: \_\_\_\_\_

**Part II Other Agreements**

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

**Part III Port Service**

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the most recent 12-month period for which complete data are available. The information should be provided in the format below.

**TIME PERIOD**

	<u>Port</u>	<u>Port</u>	<u>Port</u>	<u>Port</u>	<u>Port</u>
Carrier A					
Carrier B					
Carrier C					
etc.					

Also, for each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service to be effected immediately by the agreement, including base port designation and frequency of vessel calls.

Part IV

(A) Identification of Person(s) to Contact Regarding the Information Form

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Address \_\_\_\_\_
- (4) Telephone \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) \_\_\_\_\_  
Title \_\_\_\_\_  
Relationship with parties to agreement \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

**§572.505 Application for waiver**

(a) Upon a showing of good cause, the Commission may waive any part of the information form requirements of §§572.503 or 572.504.

(b) Requests for such a waiver shall be submitted in advance of the filing of the information form to which the requested waiver would apply and shall state (1) the specific requirements from which relief is sought; (2) the special circumstances requiring the

requested relief; and (3) why granting the requested waiver will not substantially impair effective regulation of the agreement, either during pre-implementation review or during post-implementation monitoring. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver.

18. In section 572.601, paragraph (a) and the first sentence of paragraph (b) are revised, as follows:

**§572.601 Preliminary review -- rejection of agreements.**

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under §572.505.

(b) The Commission shall reject any agreement that otherwise fails to comply with the filing and Information Form requirements of the Act and this part.

\* \* \* \* \*

19. In section 572.608, paragraph (b)(2) is revised, as follows:

**§572.608 Confidentiality of submitted materials..**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

\* \* \* \* \*

20. In section 572.701, paragraphs (b), (c) and (d) are removed, paragraph (a)(1) is redesignated (b) and is revised, paragraph (a)(2) is redesignated (c), a new paragraph (a) is added, paragraph (e) is redesignated (d) and is revised, a new paragraph (e) is added, paragraph (f) is redesignated (g) and is revised, and a new paragraph (f) is added, as follows:

**§572.701 General requirements.**

(a) Certain agreements are required to submit quarterly Monitoring Reports on an ongoing basis for as long as they remain in effect, setting forth information and data on the agreement member lines' cargo carryings, revenue results and port service patterns under the agreement. In addition, certain agreements are required to submit minutes of their meetings.

(b) *Address.* Monitoring Reports and minutes required by this subpart should be addressed to the Commission as follows: Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, Washington, D.C. 20573-0001. Copies of the applicable Monitoring Report form may be obtained from the Bureau of Trade Monitoring and Analysis.

The lower, left-hand corner of the envelope in which each Monitoring Report or set of minutes is forwarded should indicate the nature of its contents and the related agreement number. For

example: "Monitoring Report, Agreement 5000" or "Minutes, Agreement 5000."

(c) *Electronic filing.* \* \* \*

\* \* \* \* \*

(d) *Time for filing.* Monitoring Reports shall be filed within 30 days of the end of each calendar quarter. Minutes filed on an annual (calendar) year basis shall be filed by February 15 of the following year. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(e) A complete response in accordance with the instructions on the applicable Monitoring Report shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(f) A Monitoring Report for a particular agreement may be supplemented with any other information or documentary material.

(g) *Confidentiality.* The Monitoring Reports, minutes, and any other additional information submitted for a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

21. Section 572.702 is redesignated 572.706, the heading thereof is revised, and a new paragraph (d) is added, as follows:

**§572.706 Filing of minutes -- including shippers' requests and complaints, and consultations**

\* \* \* \* \*

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign *Meeting No. 1* to its minutes, the next meeting will be assigned *Meeting No. 2*, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

22. Section 572.703 is redesignated 572.707, and the reference to "§572.702" is changed to "§572.706," as follows:

**§572.707 Other documents.**

Each agreement required to file minutes pursuant to §572.706

\* \* \*

\* \* \* \* \*

23. Section 572.704 is redesignated 572.709 and is revised, as follows:

**§572.709 Application for waiver.**

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) Requests for such a waiver shall be submitted in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply and shall state (1) the specific requirements from which relief is sought; (2) the special circumstances requiring the requested relief; and (3) why granting the requested waiver will not substantially impair effective regulation of the agreement. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver.

24. A new section 572.702 is added, as follows:

**§572.702 Agreements subject to Monitoring Report requirements.**

Agreements subject to the Monitoring Report requirements of this subpart are divided into three classes, Class A, Class B and Class C. When used in this subpart:

(a) *Class A agreement* means an agreement that is subject to the definition set forth in §572.502(a) and has market shares of 50 percent or more in half or more of its sub-trades.

(b) *Class B agreement* means an agreement that is subject to the definition set forth in §572.502(a) but does not have market shares of 50 percent or more in half or more of its sub-trades.



Classification of an agreement as "Class A" or "Class B" for purposes of its reporting obligations under this subpart shall be done by the Bureau of Trade Monitoring and Analysis, based in the first instance on the market share data reported on the agreement's Information Form pursuant to §572.503, or on similar data otherwise obtained. Thereafter, at the beginning of each calendar year, the Bureau of Trade Monitoring and Analysis shall determine whether the agreement should be classified as "Class A" or "Class B" for that year, based on the market share data reported on the agreement's most recent quarterly Monitoring Report.

(c) *Class C agreement* means an agreement that is subject to the definition set forth in §572.502(b).

25. A new section 572.703 is added, as follows:

**§572.703 Monitoring report for Class A agreements.**

This section sets forth the Monitoring Report form for Class A agreements, with accompanying instructions that are intended to facilitate the completion of the Report. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

**MONITORING REPORT FOR CLASS A AGREEMENTS**

*Instructions*

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and

the efforts made to obtain the required information. All sources must be identified.

Part by Part Explanation

*Part I*

Part I requires the filing party to state the full name of the agreement, and the assigned FMC number.

*Part II*

Part II requires the filing party to indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

*Part III(A)*

Part III(A) requires the filing party to indicate whether the agreement authorizes the parties to operate as a conference.

*Part III(B)*

Part III(B) requires the filing party to indicate whether the agreement authorizes the parties to establish capacity management or capacity regulation programs, as defined in §572.104(e), whereby some part of the capacity of the parties' vessels is withheld from a specified transportation market.

*Part IV*

Part IV requires the filing party to provide the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the most recent calendar quarter. *Sub-trade* is defined as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Where the

agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

*Atlantic* -- Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

*Gulf* -- Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

*Pacific* -- Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa and Saipan.

The formula for calculating market share (in either the entire agreement scope or in a sub-trade) is as follows:

The total amount of cargo carried on each liner operator's liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, divided by the total amount of cargo carried on all liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

The amount of cargo is to be measured in TEUs. *Liner movements* is the carriage of liner cargo by liner operators. *Liner*

cargoes are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

#### Part V

Part V requires the filing party to state each agreement member line's total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, each line's total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

#### Part VI

Part VI requires the filing party to identify, for each sub-trade within the scope of the agreement, the top 10 commodities by cumulative TEUs carried by all the parties during the calendar quarter, or the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the calendar quarter, whichever is greater. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

*Part VII*

Part VII addresses how each of the parties has carried each major commodity in each sub-trade, and the revenue results experienced by each party from its carriage of each commodity. The Monitoring Report specifies the format in which the information is to be reported.

*Part VIII*

Part VIII is required to be completed if Part III(A) is answered "YES." The filing party is required to indicate the extent to which each party has taken independent rate actions on each of the leading commodities in each of the sub-trades. Part VIII also inquires into the type of shipper -- beneficial cargo owner, non-vessel-operating common carrier, or shippers' association -- for whom independent rate actions have been taken. The Monitoring Report specifies the format in which the information is to be reported.

*Part IX*

Part IX is concerned with the level of service at each port within the entire geographic scope of the agreement. The filing party is required to provide the number of calls at each port by each of the parties during the calendar quarter, and also to indicate any change in the nature or type of service effected during the calendar quarter.

*Part X*

Part X is required to be completed if part III(B) is answered "YES." The filing party is required to submit responses to a

number of inquiries into the operation of the capacity management or capacity regulation program during the calendar quarter. Where the program covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately. Copies of specified kinds of documents must also be provided.

*Part XI(A)*

Part XI(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

*Part XI(B)*

Part XI(B) requires that the filing party sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

**FEDERAL MARITIME COMMISSION**

***Monitoring Report For Class A Agreements  
Between or Among Ocean Common Carriers***

Agreement Number \_\_\_\_\_  
(Assigned by FMC)

Part I Agreement Name: \_\_\_\_\_

**Part II Other Agreements**

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Agreement Type

(A) Conferences

Does the agreement authorize the parties to operate as a conference?

Yes  No

(B) Capacity Management or Regulation

Does the agreement authorize the parties to establish capacity management or capacity regulation programs?

Yes  No

Part IV Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR  
(indicate either entire agreement scope, or sub-trade name)  
CALENDAR QUARTER

<u>AGREEMENT MARKET SHARE</u>	<u>TEUs</u>	<u>PERCENT</u>
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	X,XXX	XX%
Total Agreement Market Share	X,XXX	XX%

NON-AGREEMENT MARKET SHARE

Line X	X,XXX	XX%
Line Y	X,XXX	XX%
Line Z	<u>X,XXX</u>	<u>XX%</u>
Total Non-Agreement Market Share	X,XXX	XX%
Total Market	X,XXX	100%

*Part V Cargo and Revenue Results Agreement-Wide*

For each agreement member line, provide total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The information should be provided in the format below:

CALENDAR QUARTER

<u>Carrier</u>	<u>Total TEUs</u>	<u>Total Revenues</u>	<u>Avg. Revenue per TEU</u>
A	--	\$ --	\$ --
B	--	\$ --	\$ --
C	--	\$ --	\$ --
etc.	--	\$ --	\$ --

*Part VI Leading Commodities*

For each sub-trade within the scope of the agreement, list the top 10 commodities by cumulative TEUs carried by all the parties during the calendar quarter, or list the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the calendar quarter, whichever list is longer. The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade

A. First leading commodity



- B. Second leading commodity
- C. Third leading commodity
- etc.

II. Sub-trade

- A. First leading commodity
- etc.

Part VII *Cargo and Revenue Results by Sub-Trade*

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, provide the following information:

- (1) Total TEUs carried port-to-port under tariff rates, and average gross revenue per TEU.
- (2) Total TEUs carried port-to-port under service contracts, and average gross revenue per TEU.
- (3) Total TEUs carried by intermodal service under tariff rates, and average gross revenue per TEU.
- (4) Total TEUs carried by intermodal service under service contracts, and average gross revenue per TEU.

The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade A

A. First leading commodity

1. Carrier A

(a) Port-to-port service under tariff rates

- (1) Total TEUs of first leading commodity carried
- (2) Average gross revenue per TEU

(b) Port-to-port service under service contracts

- (1) Total TEUs of first leading commodity carried

- (2) Average gross revenue per TEU
  - (c) Intermodal service under tariff rates
    - (1) Total TEUs of first leading commodity carried
    - (2) Average gross revenue per TEU
  - (d) Intermodal service under service contracts
    - (1) Total TEUs of first leading commodity carried
    - (2) Average gross revenue per TEU
  - 2. Carrier B
    - (a) etc.
  - 3. etc.
  - B. Second leading commodity
    - 1. Carrier A
      - (a) etc.
- II. Sub-trade B
- A. First leading commodity
    - 1. etc.

*Part VIII Independent Rate Actions (if applicable)*

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the number of independent rate actions taken during the calendar quarter applicable to that commodity moving in that sub-trade, and the total number of TEUs of that commodity covered by the independent actions. Also, state the name of each shipper for whom an independent rate action was taken on that commodity during the calendar quarter, and state whether the shipper was a beneficial

cargo owner, a non-vessel-operating common carrier, or a shippers' association. The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade A

A. First leading commodity

1. Carrier A

- (a) Number of IA rate actions
- (b) Number of TEUs
- (c) Shippers affected

- (1) Shipper A - name and type
  - (2) Shipper B - name and type
- etc.

2. Carrier B

- (a) etc.

B. Second leading commodity

1. Carrier A

- (a) etc.

II. Sub-trade B

A. First leading commodity

1. etc.

Part IX Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the agreement member lines during the calendar quarter. The information should be provided in the format below:

CALENDAR QUARTER

	<u>Port</u>	<u>Port</u>	<u>Port</u>	<u>Port</u>	<u>Port</u>
Carrier A					
Carrier B					
Carrier C					
etc.					

Also, for each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service effected during the calendar quarter, including base port designation and frequency of vessel calls.

Part X *Capacity Management or Regulation (if applicable)*

For each party that served during the calendar quarter the geographic service area covered by the capacity management or capacity regulation program, provide the information indicated in the format below:

CALENDAR QUARTER

TEU capacity commitment or allocation	Total TEU capacity provided in the geographic service area	TEUs of program cargo carried	TEUs of non-program cargo carried	Total TEUs utilized in the geographic service area
---------------------------------------	--	-------------------------------	-----------------------------------	--

Carrier A  
Carrier B  
Carrier C  
etc.

Also, identify all member lines who declined to carry cargo on the basis of their capacity commitments or allocations, and describe the circumstance of each instance and the amounts of cargo involved.

Also, provide copies of any reports or analyses dealing with cargo space utilization, cargo level forecasts or new ship buildings, which were prepared during the calendar quarter and circulated among at least two agreement members.

Part XI

(A) *Identification of Person(s) to Contact Regarding the Monitoring Report*

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(B) *Certification*

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) \_\_\_\_\_  
Title \_\_\_\_\_  
Relationship with parties to agreement \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

26. A new section 572.704 is added, as follows:

**§572.704 Monitoring report for Class B agreements**

This section sets forth the Monitoring Report form for Class B agreements, with accompanying instructions that are intended to facilitate the completion of the Report. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

MONITORING REPORT FOR CLASS B AGREEMENTS

*Instructions*

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part by Part Explanation

*Part I*

Part I requires the filing party to state the full name of the agreement, and the assigned FMC number.

*Part II*

Part II requires the filing party to indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

*Part III*

Part III requires the filing party to provide the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the most recent calendar quarter. *Sub-trade* is defined as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner

movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

*Atlantic* -- Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

*Gulf* -- Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

*Pacific* -- Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa and Saipan.

The *formula for calculating market share* (in either the entire agreement scope or in a sub-trade) is as follows:

The total amount of cargo carried on each liner operator's liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, divided by the total amount of cargo carried on all liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

The *amount of cargo* is to be measured in TEUs. *Liner movements* is the carriage of liner cargo by liner operators. *Liner*

*cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

#### Part IV

Part IV requires the filing party to state each agreement member line's total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, each line's total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

#### Part V

Part V requires the filing party to identify any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

#### Part VI(A)

Part VI(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.



Part VI(B)

Part VI(B) requires generally that the filing party sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

**FEDERAL MARITIME COMMISSION**

*Monitoring Report For Class B Agreements  
Between or Among Ocean Common Carriers*

Agreement Number \_\_\_\_\_  
(Assigned by FMC)

Part I Agreement Name: \_\_\_\_\_

Part II *Other Agreements*

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III *Market Share Information*

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

**MARKET SHARE REPORT FOR**  
(indicate either entire agreement scope, or sub-trade name)  
**CALENDAR QUARTER**

<u>AGREEMENT MARKET SHARE</u>	<u>TEUs</u>	<u>PERCENT</u>
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	X.XXX	XX%

Total Agreement Market Share X,XXX XX%

NON-AGREEMENT MARKET SHARE

Line X X,XXX XX%
Line Y X,XXX XX%
Line Z X,XXX XX%

Total Non-Agreement Market Share X,XXX XX%

Total Market X,XXX 100%

Part IV Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The information should be provided in the format below:

CALENDAR QUARTER

Table with 4 columns: Carrier, Total TEUs, Total Revenues, Avg. Revenue per TEU. Rows include A, B, C, etc.

Part V Port Service

For each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service effected during the calendar quarter, including base port designation and frequency of vessel calls.

Part VI

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name \_\_\_\_\_

- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(B) *Certification*

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) \_\_\_\_\_  
Title \_\_\_\_\_  
Relationship with parties to agreement \_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

27. A new section 572.705 is added, as follows:

**§572.705 Monitoring report for Class C agreements.**

This section sets forth the Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

**MONITORING REPORT FOR CLASS C AGREEMENTS**

*Instructions*

A complete response must be supplied to the Report. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part by Part Explanation

*Part I*

Part I requires the filing party to state the full name of the agreement, and the assigned FMC number.

*Part II*

Part II requires the filing party to indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

*Part III*

Part III requires the filing party to identify any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

*Part IV(A)*

Part IV(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

*Part IV(B)*

Part IV(B) requires generally that the filing party sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

*Monitoring Report For Class C Agreements  
Between or Among Ocean Common Carriers*

Agreement Number \_\_\_\_\_  
(Assigned by FMC)

Part I Agreement Name: \_\_\_\_\_

Part II *Other Agreements*

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III *Port Service*

For each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service effected during the calendar quarter, including base port designation and frequency of vessel calls.

Part IV

(A) *Identification of Person(s) to Contact Regarding the Monitoring Report*

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Cable Address \_\_\_\_\_

(B) *Certification*

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) \_\_\_\_\_  
Title \_\_\_\_\_  
Relationship with parties to agreement \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

28. A new section 572.708 is added, as follows:

**§572.708 Retention of records.**

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is distributed to the members. Such documents may be requested by the Director, Bureau of Trade Monitoring, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

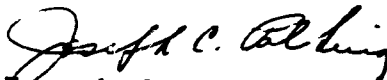
29. Section 572.902 is revised, as follows:

**§572.902 Falsification of reports.**

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable Information Form or Monitoring Report, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

30. Appendix A to Part 572 is removed.

By the Commission.

  
Joseph C. Polking  
Secretary