provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, USEPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental Protection, Air pollution control, Ozone, Nitrogen oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Dated: March 1, 1996.

Valdas V. Adamkus,

Regional Administrator.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by adding paragraphs (b)(9) and (y) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(b) * * *

(9) Clinton County

* * * * *

(y) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for Clinton County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES-OHIO

1. The authority citation for part 81 continues to read as follows:

Authority: 42. U.S.C. 7401–7671q.

2. In § 81.336 the ozone table is amended by revising the entry for the Clinton County Area to read as follows:

§ 81.336 Ohio

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date	Type
* * *	*	*	*	*
Clinton County Area, Clinton County	March 21, 1996	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

[FR Doc. 96–6778 Filed 3–20–96; 8:45 am]

BILLING CODE 6560–50–P

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: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations governing the information submission requirements for agreements among ocean common carriers subject to the Shipping Act of 1984. Certain kinds of newly filed agreements are required to be accompanied by a new information form, 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 member lines of certain kinds of effective agreements will be required to submit reports on their operations on a regular and ongoing basis, which will reflect the lines' cargo carryings, revenue results and port service patterns after they entered into the agreement. The application of this 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 rule must still be filed with the Commission, unless it qualifies for one of the Commission's filing exemptions, but does not have any information form or reporting obligations. The intent of this 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.

EFFECTIVE DATE: April 19, 1996, except for 46 CFR 572.701(a) and 46 CFR 572.702, which are stayed until further notice.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5787

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 which 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 be 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 where a protest raising substantial issues had been filed). In many cases, protests were filed by other carriers, who effectively delayed or blocked the approval of 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 [1] 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'' (''IA'') 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 IA 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.[2]

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 forwarded compensation, all of which the Commission previously had found violated section 15.[3]

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.[4] 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,[5] which would in effect supersede the existing court injunction. In addition, the Commission may assess fines against the agreement member lines.[6]

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

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

[2] Sections 6 (d) and (i) of the 1984 Act, 46 U.S.C. app. 1705 (d) and (i).

[3] *See* S. Rep. No. 3, 98th Cong., 1st Sess. 35–37 (1984).

[4] Section 11(h)(1) of the 1984 Act, 46 U.S.C. app. 1710(h)(1).

[5] Section 11(c) of the 1984 Act, 46 U.S.C. app. 1710(c).

[6] Section 13(a) of the 1984 Act, 46 U.S.C. app. 1712(a).

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,''[7] 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 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 authorize activities barred by the 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 unjust discrimination 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.

C. The Proposed Rule

On December 5, 1994, the Commission published a Notice of Proposed Rulemaking (''NPR'' or ''proposed rule'') (59 FR 62372), which proposed significant amendments to the Commission's regulations governing the submission of information by ocean carriers about their agreements. The Commission explained that, while the existing regulations had served their purpose adequately, the increasingly comprehensive and complex agreements filed in recent years indicated a need for updating and augmentation. The Commission pointed out that 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 networks of vessel and space charter agreements covering a multitude of trade lanes have been established.

In response to these industry developments, the Commission proposed new regulations designed to elicit more detailed and specific information on ocean carrier agreements in a more structured and comprehensive manner. The proposed rule formulated a sliding scale of information demands for three classes of agreements that authorized certain specific activities, ''Class A,'' ''Class B'' and ''Class C.'' An agreement that did not authorize any of the specified activities would still be required by law to be filed with the Commission, unless it qualified for one of the existing exemptions established by the Commission,[8] but would not have any information obligations.

1. Classification of Agreements: The Six Class A/B Activities

Under the proposed rule, Class A and Class B agreements permitted the same kinds of activities; the difference between them was market share. An agreement would be a Class A or a Class B agreement if it authorized *any one* of the following six activities:

- Ratemaking. This specifically included 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 less formal agreements which authorize discussion and agreement upon rates on a ''non-binding'' basis. The Commission noted that the latter types of agreements have become increasingly common, and that their presence in a trade raises serious concerns about the true level of competition since they can involve discussions and agreements about rates between non-conference lines or between a conference and its non-conference competitors.

Under the proposed rule, the ''ratemaking'' criterion would be 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. On the other hand, the proposed rule specifically excluded those agreements that are limited to practices that affect the manner in which 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, and 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 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 most significant costs for ocean common carriers are vessel-operating costs, which the proposed rule defined to include wages of officers and crew, fringe benefits, consumable stores, supplies and equipment, maintenance and repair, insurance, vessel fuel, and charter hire. The Commission stated that it believed that agreements to discuss and exchange information about these costs should be subjected to the same degree of scrutiny as their close cousins, rate discussion agreements. On the other hand, the proposed rule did not apply the ''costs'' criterion to discussion of other types of expense that are less important for setting rates. In order to make this distinction effective, the proposed rule required agreements seeking to authorize discussion or exchange of cost data to specify whether that authority includes any of the vessel-operating costs.

- Joint service. The Commission observed that, 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 device for dealing with overtonnaging had appeared in two major agreements, the Trans-Atlantic Conference Agreement (''TACA'') and

[7] H.R. Rep. No. 600, 98th Cong., 2d Sess. 37 (1984).

[8] *See* 46 CFR 572.302–11.

the Transpacific Stabilization Agreement (''TSA''). It limited the availability of vessel space to shippers, but did not reduce the real capacity of the carriers.

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

• Cargo or revenue pooling. The Commission explained that such agreements are severely anticompetitive by nature and must be closely regulated.

2. Classification of Agreements: The Importance of Market Share

The proposed rule required any agreement that authorized 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 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'' was 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 authorized at least one of the six Class A/B activities and whose parties held combined market shares of 50 percent or more in half or more of its sub-trades would be classified as a Class A agreement under the proposed rule.[9] The parties to such an agreement would be required to submit extensive historical data on the initial information form *and*, if the agreement went into effect, to submit detailed quarterly reports on their operations under the agreement. An agreement that authorized at least one of the six activities, but whose parties did not hold market shares of 50 percent or more in at least half of its sub-trades, would be 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. Under the proposed rule, 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 parties' sub-trade market shares during the third calendar quarter (July–September) of the previous calendar year would determine whether it would remain under Class A reporting obligations for the upcoming year.

Market share is an important measure of an agreement's potential for abuse of economic power and unreasonable or discriminatory price and service practices. In the NPR, the Commission explained that 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 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.'' 59 FR at 62377. The Commission also pointed out, however, that an important feature of the proposed rule was that the market share calculation for a rate discussion agreement or a ''non-binding'' rate agreement between conference and non-conference lines would add the market shares held by the non-conference lines to those held by the conference lines for purposes of determining whether the agreement should be classified as Class A or Class B.

The new focus on sub-trades resulted from the increasing number of agreements with multi-coast or even multi-continent geographic ranges. The Commission pointed out in the NPR that in some of the more geographically fragmented parts of the world, such as the Far East and the South Pacific, individual countries can constitute separate and cloistered markets, and that agreements that serve a comparatively unified landmass, such as Europe, might still implement practices that differ from area to area within the general market. The Commission concluded that these factors argued 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. Accordingly, the information (besides market share) sought by the proposed rule for Class A agreements was, for the most part, concerned with the agreement's sub-trades.

3. Class A Agreements Under the Proposed Rule

The proposed rule's *informtion form* for a Class A agreement began 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 was designed to ensure that the Commission has accurate information regarding the recent trend toward networks of agreements connected by common parties. Next, the form required 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 inquired 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 focused primarily on the state of affairs in each of the agreement's sub-trades before the agreement was filed. This would be done by reference to the major commodities carried by the carriers to and from the United States in each sub-trade.

Using the actual commodities potentially affected by a new agreement as the chief focus of analysis was a vital component of the proposed rule. The proposed information form, while continuing to require the submission of aggregate data in certain areas, mainly would require each party to the new agreement to identify the commodities that have made up the bulk of its cargo in each sub-trade and then to submit data on the revenues it has realized from each of those commodities. This information was intended to give the Commission a reasonably thorough summary of pre-agreement activity in each sub-trade covered by the new agreement, as well as in the agreement's entire geographic scope. If the agreement should go into effect, that summary would serve as a baseline for analyzing the corresponding information later obtained through the post-implementation reports. In the NPR, the Commission stated:

> 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.

[9] 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 sought to focus on those agreements with significant market power spread through at least half of their total geographic scope.

59 FR at 62377.

Under the *reporting requirements* for effective Class A Agreements, the parties' market shares would continue to be tracked by sub-trade. In addition, 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, a new section entitled ''Independent Rate Actions'' was proposed for Class A conference agreements, which would require the submission of information designed to allow the Commission to monitor the level of independent rate activity (or the lack of such activity) on specific commodities.

4. Class B Agreements Under the Proposed Rule

As already stated, the proposed rule prescribed the same information form for Class B agreements as for Class A agreements. This would establish the same pre-agreement baseline. However, assuming the Class B agreement was allowed to go into effect, the reporting requirements would be limited to quarterly updates on market share, agreement-wide (as opposed to sub-trade) cargo and revenue results, membership in other agreements, and changes in port service.

5. Class C Agreements Under the Proposed Rule

An agreement that authorized 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 did not authorize ''capacity management'' (or any of the other Class A/B activities), would be a Class C agreement under the proposed rule. The Commission noted that, 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 provided for information form and reporting requirements regarding membership in other agreements and service at the ports within the agreement's overall scope.

6. Other Amendments

The proposed rule contained a number of other amendments to the Commission's existing agreement regulations. For the most part, these amendments were not substantive and were 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.

7. Carrier Costs and Profits

The Commission's obligation under section 6(g) 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), raised the question whether these policies can or should be pursued by monitoring the costs or profits of the carriers to a particular agreement. The proposed rule did not include provisions on carrier costs or profits, but the Commission solicited comments on the lawfulness and feasibility of such provisions. Commenters were asked to address how such provisions might be structured, particularly given the proposed rule's focus on individual country sub-trades; whether costs or profits under a particular agreement can be measured accurately, particularly if the carriers to the agreement also have 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 that agreement, rather than made the subject of regulations applicable to broad classes of agreements.

D. Summary of the Comments

The comments on the Proposed Rule were all filed by carriers or carrier organizations. No shippers, shipper organizations, government agencies or other maritime interests responded to the NPR. Comments were filed by:

—TACA, the Asia North America Eastbound Rate Agreement, the Transpacific Westbound Rate Agreement, the Inter-American Freight Conference,and twenty-one other conferences and discussion agreements, filing jointly (referred to below as the ''25 Agreements'');
—the Council of European & Japanese National Shipowners' Associations (''CENSA'');
—TSA, which adopted the comments of the 25 Agreements and filed additional comments on the special topic of capacity management programs;
—the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, and their member lines (''Japan Conferences'');
—the India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference and the Calcutta, East Coast of India and Bangladesh/U.S.A. Conference (the ''Associated India/Pakistan Conferences''); and
—Hanjin Shipping Co., Ltd.

1. Hanjin

Hanjin's comments attacked the lawfulness of the proposed rule. The carrier made no counterproposals and suggested no alternatives, but merely urged that the rule be withdrawn.

Hanjin's central objection was to the proposed rule's model of generalized regulations that prescribe information requirements for classes of agreements; the gist of its position was that the Commission is restricted, as a matter of law, to requiring information only on an ''as needed'' basis for individual agreements. Hanjin contended that, when an agreement is first filed, the FMC's only authority is to ensure that the agreement complies with the content requirements of section 5 of the 1984 Act and does not transgress the standards of section 6(g), and that to discharge those functions the FMC does not need the information required under the proposed rule. Much of that information, Hanjin argued, would be overly burdensome to produce and is not sufficiently tied to the scope, size, or other specifics of a particular agreement. Similarly, with respect to effective agreements, Hanjin submitted that the Commission should act only through targeted investigations where information demands can be properly focused and limited.

Discussion Hanjin's arguments are incorrect. The Commission has ample statutory authority to promulgate general regulations governing the initial evaluation and subsequent surveillance of carrier agreements. Section 5(a) of the 1984 Act states specifically that ''[t]he Commission may *by regulation* prescribe the form and manner in which an agreement shall be filed *and the additional information and documents necessary to evaluate the agreement.*'' 46 U.S.C. app. 1704(a) (emphases added). In addition, the Commission has broad rulemaking authority under section 17(a) of the Act, *id.* app. 1716(a), and there is nothing in the language or legislative history of the Act that bars the application of that authority to carrier agreements. Hanjin does not acknowledge that the Commission has had in effect since 1984 extensive rulemaking-generated regulations governing the filing and monitoring of agreements, including regulations prescribing the current information form. It should also be pointed out that the Commission could obtain the same information set forth in the proposed

rule—both the new information form data and the correlated monitoring report data—by issuing a demand for a ''periodical or special report'' under section 15 of the 1984 Act, 46 U.S.C. app. 1714(a). However, the Commission believes that, over the long run, regular and universally applicable information gathering is less burdensome on the industry than *ad hoc* section 15 orders or investigative subpoenas, because it enhances predictable and consistent regulation and the information obtained can persuade the agency that more formal and costly investigations are not necessary.

2. Other Comments

Of the other commenters, none challenged the proposed rule's central thesis that changes to the FMC's information-gathering processes were required by the changes in the nature, scope and complexity of carrier agreements since 1984. The Japan Conferences, for example, said that they ''* * * do not oppose the concept embodied in the Proposed Rule which would enable the Commission to become better informed relative to newly filed agreement activity and their post-effective implementation.'' (Comments at 3). None of these commenters objected to the intensified treatment under the rule of rate discussion agreements, ''non-binding'' rate agreements, and agreements to discuss or exchange vessel-operating cost data. None argued against the rule's proposal to distinguish between Class A and Class B agreements on the basis of market share, and there were no objections to the rule's proposed demarcation of a 50 percent market share. None argued against the rule's intention to monitor the impact of effective agreements according to the revenue realized from leading commodities. None took issue with the rule's proposal to require by regulation—rather than by negotiated consent—the submission of reports at regular intervals for effective agreements, although issues were raised regarding the frequency of such reports.

E. Specific Issues

The following analysis of the specific issues raised by the comments is organized by subject matter. In general, the issues raised by the comments apply both to the proposed rule's revised information form and to the rule's new post-effective monitoring reports. Where an issue raised special concerns for either the information form or for the monitoring reports, that is indicated in the text.

1. Class A/B Activities

(a) Duplicative Filings

The members of the Japan Conferences are also members of three inter-conference ''policy agreements'' (FMC Nos. 206–010838, 206–008600, and 206–010707) that contain authority to discuss and agree on rate and service contract issues of common interest. The Conferences did not object to the fact that these agreements would be Class A/B agreements under the proposed rule, but argued that they should not be required to submit the same information for both the basic conference agreements and the inter-conference agreements:

> These supplementary agreements involve the identical Conference parties, the same TPFCJ and JAGFC trades and subtrades, the same vessels and services, and the same Conference rates and service contracts. . . . [T]he Proposed Rule should be revised to permit the information which is required to be submitted by the relevant conference to qualify as the supplementary arrangement's economic information submission.

(Comments at 6).

Discussion It is unnecessary to amend the rule to deal with this concern. Complaints from the members of an agreement that they are being asked to submit information that duplicates information submitted in connection with another agreement can and will be handled on a case-by-case basis, under the rule's waiver procedure.

(b) Non-binding Rate Authority That Can Only Be Implemented Through Other Agreements

A related issue was also raised by the Japan Conference lines, which stated that they ''also operate under space charter and sailing agreements within the Conference trades, as well as in other trades and beyond.'' (Comments at 2). Such agreements typically contain authority to discuss and agree upon rates on a ''non-binding'' basis, a Class A/B activity. The Japan Conferences argued, however, that under the terms of these agreements, any rate agreements arrived under them can only be implemented through the Conferences themselves, and so all relevant information about the impact of the smaller agreements would be provided to the Commission through the Conferences' submissions.

Discussion Again, such discrete, fact-specific situations will be left for the rule's waiver procedure. A waiver may well be appropriate for side agreements between two or more conference members that are subject to reporting requirements through their membership in the conference agreement itself. However, a different situation would be presented by an agreement allowing ''non-binding'' rate discussions between a conference line and non-conference line.

2. Information Form for Class A/B Agreements

(a) Scope of Requirement

The Japan Conferences raised a general objection to the proposed rule's requirement that all new agreements authorizing any of the Class A/B activities must file an information form, and to the Commission's intention, as stated in the proposed rule, to require all effective agreements that authorize any of the Class A/B activities to file equivalents of information forms in order to establish baselines for future monitoring. The Japan Conferences proposed instead that such requirements be imposed only on agreements with a 35 percent market share. This change, it was argued, would excuse ''smaller agreements which are likely never to threaten dominance in the trade they serve or ever to imperil the (section 6(g)) general standard * * *.'' (Comments at 10).

Discussion This suggested modification is rejected. The information form requirement for Class A/B agreements is triggered by the anticompetitive activities that such agreements authorize, rather than by market share. This is because the collusion on price or service that a Class A/B agreement would introduce into a trade has sufficiently serious implications for shippers and the foreign commerce of the United States that extensive information on the parties' pre-agreement prices and services is necessary. If the parties have a low market share initially, that may ease the agreement's initial review under section 6(g). However, the agreement's potential for unreasonable price increases or service reductions would always be present, particularly since the Commission cannot lawfully impose a term limit on an agreement's effectiveness. 46 U.S.C. app. 1705(f). If the parties should eventually obtain a high market share and if the agreement became the subject of a section 6(g)—investigation, comparisons with the pre-agreement profile of the trade would clearly be relevant. In addition, even a 35 percent market share may make the agreement parties the price leaders in the trade if the remaining 65 percent is spread out among many other carriers.

(b) Actual Versus Authorized Activity

The Associated India/Pakistan Conferences suggested that ''[a]s an additional question or, in the

alternative, the information form could query whether the parties actually do discuss or exchange data on operating costs, pool cargoes or revenues, etc., as the case may be.'' (Comments at 1).

Discussion This suggested amendment is rejected. It would be impractical to attempt to adjust the level of regulation according to whether the parties were or were not using the authority contained in the agreement. Agreements must be taken at face value, and permitted activities must be assumed to be actual activities. With regard to the information form, it should be noted that the parties would be violating the Shipping Act and the antitrust laws if they were already engaged in the activities that the newly filed agreement sought to authorize.

3. Market Share

As stated above, no commenter objected to the proposed rule's provision that an agreement that authorized at least one of the Class A/B activities and held market shares of 50 percent or more in half or more of its sub-trades would be classified as a Class A agreement for purposes of the rule's monitoring report requirements. However, there were some comments on how market share should be calculated.

(a) Definition of ''Sub-trade''

As stated above, the proposed rule defined ''sub-trade'' 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.

The 25 Agreements (joined by TSA) said that carriers ''do not necessarily'' collect and maintain data on cargo movements according to the proposed rule's definition, and that using that definition would result in a ''huge'' amount of data for some conferences. (Comments at 4). They would narrow the definition in two ways.

First, the United States should be considered as one unit (*i.e.*, no port ranges). The same argument was made by CENSA.

Second, it was argued that the Commission should * * *

> * * * recognize that agreements may cover a large number of foreign countries, many of which are small and may be considered together by the agreement as one market. In such a case, the agreement should be allowed to provide data to the Commission regarding this group of foreign countries, rather than having to break down the data on a country-by-country basis. Accordingly, the Conferences suggest that the Commission allow the members of an agreement to provide the data in the manner in which they define their markets. If, in a particular case, the Commission believes more detailed data is required, it can request additional information.

(Comments at 5–6). A similar, though less specific, argument was made by the Japan Conferences, which contended that the Commission should allow the substitution of ''broader geographic ranges of countries wherever possible,'' in order to reduce the burden of complying with the Rule. (Comment at 13).

Discussion The question of how to define an agreement's sub-trades is extremely important, because much of the substantive information required by the final rule—not just market share—is to be collected and submitted by sub-trade.

Any deviation from the rule's definition of sub-trade, for either the U.S. side or for the foreign side, will be allowed only through the rule's waiver procedure. Further, the burden will be on the carriers to show that their marketing and pricing are done by multi-country regions rather than by individual countries, or, in the case of the United States, by the United States as one unit rather than by separate port ranges. If such a showing is made, then an appropriate adjustment from the rule's requirements can and should be made. The rule is intended to measure and monitor actual economic behavior, not to impose its own model on the industry.

It should be noted, however, that waivers of the definition of ''sub-trade'' could involve difficult issues of fact. For example, in the case of a newly filed agreement, the information form requires data from the agreement signatory carriers on their operations in the agreement trade and sub-trades before the agreement was filed, when the carriers presumably were not coordinating their marketing and pricing. Therefore, an attempt to construct a regional definition of ''sub-trade'' that could be used by all carriers for their information from data submissions will succeed only if it can be shown that the carriers, though operating individually, were nevertheless applying essentially similar regional marketing and pricing practices.

A somewhat easier situation may be presented by the monitoring reports, which track the market shares, services and revenue results of the agreement parties after the agreement has been implemented. For conference agreements at least, this would allow the use of the agreement common tariff as the indicator of the parties' marketing and pricing practices, and it should not be difficult to define the agreement's sub-trades according to the construction of the agreement tariff. Similarly, a joint service operated by a single entity, *see* 46 U.S.C. app. 1709(e), would presumably be utilized only one tariff.

Because efforts to agree upon an alternative definition of ''sub-trade'' for a particular agreement may be arduous and time-consuming, the final rule provides that a waiver of the rule's definition must be obtained in advance of the required information submission, whether that be an information form or a monitoring report.

(b) Market Shares of Non-member Carriers

CENSA, the Japan Conferences and the Associated India/Pakistan Conferences argued that they should not be required to produce market share data for carriers not parties to their agreements.

Discussion This suggested modification is rejected. The current information form already requires the parties to a new agreement to provide ''estimates (or precise information where available) of non-party liner operator market share (shown either for each individual operator or for all operators collectively).'' 46 CFR part 572, at 314 (1994). The final rule is thus only an incremental refinement of an existing requirement. The rule requires that non-party market shares be stated by individual liner operator in order that the true extent of non-party competition can be gauged accurately; as observed above, an agreement with a market share of only 35 percent could nevertheless have significant market power if the non-party carriers all have small market shares.

(c) Cargo Not Measured in TEUs

The proposed rule required market share, cargo carrying and revenue results to be measured by TEUs. The 25 Agreements and the Associated India/Pakistan Conferences pointed out that data on breakbulk and certain other types of cargo are not available in TEUs.

Discussion The final rule clarifies that the member lines of an agreement should include only containerized cargo (stated in TEUs) in their information submissions, if the cargo they carry in the agreement trade—or sub-trade, if that is the focus of the particular report—is predominantly containerized. If the cargo they carry is predominately non-containerized, the carriers' reports of market share, cargo carryings and revenue results should include only non-containerized cargo. The rule does not impose a particular unit of measure of non-containerized cargo, requiring

only that the unit employed be stated clearly and applied consistently.

4. Reports on Cargo Carryings

In response to a comment by the Associated India/Pakistan Conferences, the final rule clarifies that reports on cargo carryings should include cargo not subject to tariff filing.

5. Reports on Carrier Revenues

The comments on the proposed rule's provisions for the submission of carrier revenue data focused on the commercial sensitivity of such data. The commenters—the 25 Agreements, CENSA and the Japan Conferences—were apparently concerned that reporting individual carrier revenue data to the Commission, as the rule would require, will result in exposure of confidential business information. Three protective limitations were proposed:

—Conferences with four or more members would provide total revenue and average-revenue-per-TEU but on an aggregated, agreement-wide basis rather than on a line-by-line basis. It was argued that this would give the Commission the necessary information on the agreement's impact, while safeguarding the confidentiality of the revenue data.

—Conferences with three or fewer members should be exempt from providing revenue data altogether. The 25 Agreements contended that even the aggregate approach is not sufficiently protective for smaller conferences ''***because even with an average, there are so few figures contributing to the average, the average revenue per line is likely to be fairly obvious.'' (Comments at 7). It was also submitted that small conferences often do not have secretariats or other central staff who can protect sensitive information, and that the demands of the proposed rule would be especially burdensome for small conferences.

—Rate discussion agreements which do not have binding rate-making authority should be exempt from providing revenue data if their membership includes carriers who belong to a conference. The rationale was that in such cases the Commission would obtain the carriers' revenue data through the conference's reporting. It was also argued that, like small conferences, discussion agreements generally do not have a central staff to collect the data from the member lines and maintain its confidentiality.

Discussion These limitations are rejected. By requiring individual carrier revenue data, the rule recognizes that Shipping Act agreements, unlike a merger, maintain the separate trade identities of their parties (with the limited exception of joint services). Thorough and accurate regulation of these ongoing price and service consortia requires knowledge of the business results of the actual operating entities. The rule's emphasis on sub-trades also requires individual carrier data, since a particular agreement sub-trade may not be served by all the parties to the agreement. Similarly, individual carrier data will further appropriate oversight of multiple agreements that are connected by common parties.

The comments would have the form and manner of appropriate regulation determined, not by the carriers that are the regulated entities under the Shipping Act, but by the form of organization that the carrier choose for themselves. The requirement for individual carrier data accommodates the apparent trend in ocean shipping away from traditional conferences, which have featured relatively independent chairmen and established central offices, and toward looser discussion agreements administered in some cases by rotation among the member lines. If this trend should continue, the excuse offered by the comments as to why even aggregate data should not be required from some agreements might eventually be raised for all agreements.

Taken on its own terms, the suggested distinction between conference is flawed: A three-member conference serving a small trade may well have a dominant market share, and therefore require careful monitoring. More generally, small conferences do not necessarily mean small member lines; a relatively small conference may have as members large carriers with established and sophisticated information systems. The proposal for rate discussion agreements would be workable only if all of the members of a particular discussion agreement were also members of a conference *and* if the discussion agreement and the conference agreement had identical geographic scopes. In such a situation, a waiver might be merited to avoid duplicative reporting as discussed above, but a general exemption is unworkable and in appropriate.

With regard to the carriers' concern about disclosure of their revenue data, there is no reasonable ground for anticipating improper public use of such data by the Commission. Once received by the Commission, revenue data is protected under section 6(j) of the 1984 Act and is exempt from disclosure under the Freedom of Information Act.[10]

6. Carriage and Revenues Data by Leading Commodities in Each Sub-trade

The heart of the proposed rule can be found in parts VI and VII of the information form for Class A/B agreements and the corresponding parts VI and VII of the monitoring report for Class A agreements. These provisions required each member line of such an agreement to submit extensive data for each ''top 10'' commodity carried in each sub-trade.

The provisions triggered strong opposition from most of the commenters, particularly the requirement in the two parts VII that each carrier provide detailed information on how it carried each major commodity in each sub-trade (*i.e.*, TEUs carried port-to-port under tariff rates; TEUs carried under intermodal tariff rates; TEUs carried port-to-port under service contracts; and TEUs carried in intermodal service under service contracts) and then the average revenue per TEU realized by the carrier from each type of carriage. The 25 Agreements, for example, contended:

> Determining the method by which cargo moves, *e.g.*, tariff vs. service contract, port-to-port vs. intermodal, would likely require a review of every bill of lading for every shipment in the trade. The potential cost and burden of performing such a review is staggering.

(Comments at 11).

Discussion Significant revisions to these sections of the proposed rule are warranted in response to the concerns of the commenters. Specifically, each member line will be required to provide total carriage and average revenue data for each leading commodity in each sub-trade, but will no longer be required to calculate such data separately for port-to-port and intermodal services, or for tariff and service contract services. This modification essentially adopts an alternative offered by the 25 Agreements (except that the Agreement urged limitations on reporting revenue data which were identical to those already rejected above (*i.e.*, aggregate instead of individual line data, no reporting for small conferences, and so on)). As revised, the new regulations will obtain cargo and revenue data most directly relevant to review of an agreement under the section 6(g) general standard, while eliminating the aspects of the

[10] 5 U.S.C. 552(b)(4); *see, e.g., Gulf & Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979).

proposed rule that would have placed the greatest burden on the industry.

The comments addressed the ''top 10'' scheme only in passing; in response to a comment by the Associated India/Pakistan Conferences, the final rule clarifies that individual commodities should be identified at the 4-digit level of customarily used commodity coding schedules.

7. Port Service Data

Part VIII of the proposed information form required data on the number of calls by each member-line during the most recent 12-month period at each port covered by the agreement, and any change in the nature or type of service to be effected immediately ''by the agreement,'' including base port designations and frequency of vessel calls. Similar data was required by the proposed monitoring report for Class A agreements.

The 25 Agreements (joined by CENSA) suggested that ''port'' be limited to U.S. ports, ''* * * since the FMC does not require information regarding calls at foreign ports to fulfill its regulatory responsibilities.'' (Comments at 12). Also, they proposed that changes in service be clarified to mean only those changes ''* * * that are required by the agreement, rather than any changes made by an individual carrier for its own commercial reasons.'' (*Id.*).

Discussion The Commission disagrees that the impact of agreements on liner service in U.S. foreign trades can be adequately monitored by reference only to U.S. ports, but will make other modifications to this part of the Rule. The phrase ''by the agreement'' will be deleted from the information form, so that it is clear that each member line of a new agreement should state whether *it* (rather than ''the agreement'') will be making any changes in the nature or frequency of its service at any port covered by the agreement, once the agreement goes into effect. In the corresponding part of the monitoring report, the requirement that each member line list the number of calls at each port during the previous calendar quarter is deleted; instead, the lines are simply asked to describe any changes in the nature of their services at each agreement port, *e.g.*, serving a port by substituted rather than direct service.

8. Capacity Management Programs

The special provisions of the proposed rule that deal with agreements authoring ''capacity management'' or ''capacity regulation,'' including the identification of ''capacity management'' or ''capacity regulation'' as one of the Class A/B activities, are deleted. There are now no agreements on file with the Commission containing such programs, and accordingly there is no need at present for specific regulations addressing this unusual and highly controversial area of carrier activity. Any future capacity management filings will be dealt with on a case-by-case basis. Through its statutory authorities in section 6(d) and 15 of the 1984 Act, the Commission will have sufficient means of analyzing any such agreements by obtaining and reviewing all planning documents, trade reports, capacity calculations, and any other relevant information that was used to negotiate the capacity limits in the new agreement. If reporting is necessary, that could be done through imposition of a permanent section 15 order.

9. Data on Independent Actions

For the monitoring reports filed by Class A conferences, the proposed rule required each member line to state the number of IAs taken on each leading commodity within each sub-trade, and the total number of TEUs of that commodity covered by the IAs. The 25 Agreements opposed this requirement on the ground of burdensomeness. The Japan Conferences claimed that ''the Conferences'' do not maintain data on the TEUs carried by their member lines under IA rates, and suggested that many of their member lines do not maintain such data either.

The proposed rule also required identification of each shipper for whom an IA was taken on a leading commodity during the calendar quarter, and a statement as to whether the shipper was a beneficial cargo owner, a non-vessel-operating common carrier, or a shipper's association. The 25 Agreements responded that IAs are often not taken for a specific shipper:

> Instead, they may be taken to service a particular market so that a carrier can break into that market or remain competitive in it. In such instances, therefore, the carriers obviously cannot provide any shipper information.

(Comments at 15–16). Similar objections were filed by the Japan Conferences and CEMSA, although the Japan Conferences were willing to provide data on the type of shipper for whom IAs had been taken.

Discussion The requirement for reporting the number of TEUs moving under the IAs taken for each leading commodity has been deleted. The final rule requires each member of a ''Class A'' conference to submit data both on the number of IAs taken on each leading commodity in each agreement sub-trade and, in part VII of the conference's monitoring report, on the average revenue per TEU realized by the member line from its carriage of each leading commodity in each sub-trade. The Commission believes that it will be able to accurately monitor the true level of IA activity within a conference by comparing and contrasting these two sets of data.

Reductions have also been made in the amount of shipper-related IA data. Rather than requiring the name of each shipper for whom an IA was taken during the calendar quarter, the final rule instead requires each member line to state how many of its total IA actions for each leading commodity during the quarter were taken to service specific shipper accounts (rather than for general commercial reasons) and of those, how many were taken for NVO accounts and how many for shippers' association accounts. These changes respond to observations of the commenters that many IAs are taken to preserve market share or to penetrate new markets, rather than for specific customers, and to the commenters' concerns about protecting the identity of those shippers for whom IA was taken.

10. Quarterly Reporting

Objections were raised to the proposed rule's requirements that monitoring reports be submitted on a quarterly basis. The Japan Conferences, for example, said that ''* * * economic trends in the ocean shipping business do not ordinarily change to any significant degree in the space of a three month period, or even over six months or a year.'' (Comments at 4). They asked that reports be submitted annually ''* * * or, certainly, with no greater frequency than semi-annually.'' *Id.* at 5).

Discussion The final rule retains the requirement for quarterly monitoring reports. The Commission specifically disagrees with the Japan Conferences' characterization of the cycles of international ocean shipping; the experience of the Pacific trades during 1995 was certainly to the contrary. More important, given the significant modifications and reductions made by the final rule to the information demands of the proposed rule, there is no basis to conclude on this record that quarterly reporting will be unduly burdensome or otherwise unreasonable. It should be pointed out again, however, that an individual waiver of the quarterly reporting requirement can be obtained under the proper circumstances.

11. Miscellaneous

The proposed monitoring report for Class A agreements required a statement as to whether the agreement is a conference or has capacity management provisions. This was meant to facilitate checking of the carriers' compliance with the special requirements for such agreements. The 25 Agreements viewed this as ''duplicative information'' (Comments at 15) that should be required only if there has been some change since the last report. As discussed above, the proposed rule's provisions for capacity management agreements have been deleted, but the requirement that a conference identify itself as such in its monitoring reports is retained to avoid any uncertainties from the fact that conference names often do not include the word ''conference.''

In response to a suggestion from the Associated India/Pakistan Conferences, the ''contact person'' provisions of the information forms and monitoring reports have been updated to include fax and telex numbers as well as cable addresses.

The number of copies required for an agreement filing by subpart 572.401 has been reduced from an original and ten copies to an original and seven copies. In addition, subpart 572.701 and the instructions for the Information Forms and Monitoring Reports have been clarified with respect to joint services.

12. Carrier Costs and Profits

The 25 Agreements and CENSA argued that data on profits and/or costs in the agreement trade are irrelevant to a section 6(g) analysis. The Japan Conferences were also opposed, but took a less dogmatic position:

> The Conferences do not contend that there will never be a case where it would be appropriate or necessary for the Commission to review cost or profit information, or that in a proper case involving a particular agreement, section 15 should not be used to demand such information.

(Comments at 14). Rather, they argued that rulemaking is too broad a procedure and is not tied to a specific need for such data. Also, they pointed out that the proposed rule is based on sub-trade data, and that cost and profit data by sub-trade would be very suspect.

Discussion: The Commission will not propose a further rulemaking at this time to capture cost and profit data. However, we wish to stress that the costs incurred and the profits realized by the carrier parties to a particular agreement could well be relevant to a section 6(g) analysis of that agreement, especially if purported revenue losses are being used to justify the agreement.

For the most part, these amended regulations will become effective thirty days after publication in the Federal Register. New agreements then will be required to comply with the revised information form provisions. However, the proper application of the new monitoring report provisions in 46 CFR 572.701–705 to agreements already in effect cannot be determined immediately, because the market share data necessary to separate Class A/B agreements into Class A and Class B are not readily available.

Accordingly, effectiveness of the monitoring report provisions of the final rule is stayed until further notice. The Commission will direct all existing Class A/B agreements to submit reports under section 15 of the 1984 Act that will 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 monitoring report provisions will be lifted, and the orderly filing of the regular monitoring reports (including those applicable to Class C agreements) will begin.

For those agreements already in effect that are subject to negotiated reporting requirements, those requirements will remain in effect until the stay is lifted and the new reporting requirements become applicable. Also, the stay does not apply to the pre-existing obligation (now codified at 572.706–708) of certain agreements to submit minutes of their meetings.

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 rule has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995, and has been assigned OMB control number 3072–0045. Under the proposed rule, the incremental public reporting burden was estimated to range from an average of 46 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. With the modifications made to the proposed rule, the incremental public reporting burden for preparing responses to the collection of information requirements of the final rule is estimated to range from an average of 36 to 97 hours per response. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 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 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 § 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 regulations to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

* * * * *

3. In § 572.104, paragraphs (ee) and (ff) are redesignated (ii) and (jj); (dd) is redesignated (hh); (z) through (cc) are redesignated (dd) through (gg); (y) is redesignated (cc); (s) through (x) are redesignated (u) through (z); and (e) through (r) are redesignated (f) through (s); new paragraphs (e), (t), (aa), (bb), and (kk) are added; in newly redesignated (g), the last sentence is revised; newly redesignated (j) is revised; the heading of newly redesignated (o) is revised; newly redesignated (cc) is revised; and in newly redesignated (hh), the last sentence is revised to read 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.

* * * * *

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

* * * * *

(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.

* * * * *

(o) *Joint service agreement* * * *

* * * * *

(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.

* * * * *

(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.

* * * * *

(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.

* * * * *

(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 charter hire expenses.

§ 572.301 [Amended]

4. In § 572.301, paragraph (b) is amended by removing the words ''Information Form'' and the comma immediately thereafter.

§ 572.302 [Amended]

5. In § 572.302, paragraph (b) is amended by removing the words ''Information Form'' and the comma immediately thereafter.

§ 572.303 [Amended]

6. In § 572.303, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.304 [Amended]

7. In § 572.304, paragraph (b) introductory text is amended by removing the words ''and Information Form.''

§ 572.305 [Amended]

8. In § 572.305, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.306 [Amended]

9. In § 572.306, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.308 [Amended]

10. In § 572.308, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.309 [Amended]

11. In § 572.309, paragraph (a) introductory text, is amended by removing the words ''Information Form'' and the comma immediately thereafter.

12. In subpart D, the heading is revised to read as follows:

Subpart D—Filing of Agreements

13. In § 572.401, the heading and paragraphs (a)(1), (a)(2), (c), (d), and (e) are revised to read as follows:

§ 572.401 General requirements.

(a) * * *

(1) A true copy and 7 additional copies of the filed agreement;

(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.

* * * * *

§ 572.402 [Amended]

14. In § 572.402, paragraph (e)(2) is amended by revising the reference to ''§§ 572.501 and 572.502'' to read ''§§ 572.403 and 572.404,'' paragraph (f) is amended by revising the reference 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.

§ 572.403 [Redesignated as § 572.405 and Amended]

15. Section 572.405 is removed and § 572.403 is redesignated § 572.405 with paragraphs (a) and (g)(3) revised as follows:

§ 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.

§ 572.501 [Redesignated as § 572.403 and Amended]

16. Section 572.501 is redesignated 572.403 and paragraphs (a) and (b) are amended by revising the references to ''§ 572.502'' to read ''§ 572.404.''

§ 572.406 [Redesignated as § 572.407]
§ 572.404 [Redesignated as § 572.406]

17. Section 572.406 is redesignated § 572.407 and 572.404 is redesignated § 572.406 and revised to read as follows;

§ 572.406 Application for waiver.

(a) Upon 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.

§ 572.202 [Redesignated as § 572.404 and Amended]

18. Section 572.502 of subpart E is redesignated § 572.404 and paragraphs (a) and (b)(1) are amended by revising the reference to ''§ 572.501'' to read ''§ 572.403.''

19. The heading of subpart E is removed and new subpart E is added as follows:

Subpart E—Information Form Requirements

Sec.
572.501 General requirements.
572.502 Subject agreements.
572.503 Information form for Class A/B agreements.
572.504 Information form for Class C agreements.
572.505 Application for waiver.

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 filing parties' 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) An agreement authorizing discussion or exchange of data on vessel-operating costs as defined in § 572.104(kk); or

(5) 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.

The Information Form for Class A/B agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix A of this part.

The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 572.

§ 572.504 Information form for Class C agreements.

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

§ 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) A request for such a waiver must be approved in advance of the filing of the information form to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver 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.

20. In § 572.601, paragraph (a) and the first sentence of paragraph (b)(1) 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)(1) The Commission shall reject any agreement that otherwise fails to comply with the filing and Information Form requirements of the Act and this part. * * *

* * * * *

21. In § 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.

* * * * *

22. In § 572.701, paragraphs (b), (c) and (d) are removed, paragraph (f) is redesignated (i) and is revised, paragraph (e) is redesignated (f) and is revised, paragraph (a)(1) is redesignated (d) and is revised, paragraph (a)(2) is redesignated (e) and the second sentence thereof is revised, a new paragraph (a) is added, a new paragraph (b) is added, a new paragraph (c) is added, a new paragraph (g) is added, and a new paragraph (h) 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.

(b) Certain agreements are required to submit minutes of their meetings for as long as they remain in effect.

(c) *Joint Services.* For purposes of the requirements of this Subpart, a joint service filing its own Monitoring Report shall file as one carrier. If a joint service is a party to another agreement that is otherwise subject to the requirements of this Subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) *Address.* Monitoring Reports and minutes required by this subpart should be addressed to the Commission as follows: Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573–0001. Copies of the applicable Monitoring Report form may be obtained from the Bureau of Economics and Agreement 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.''

(e) *Electronic filing.* * * * Detailed information on electronic transmission is available from the Commission's Bureau of Economics and Agreement Analysis.

* * * * *

(f) *Time for filing.* Monitoring Reports shall be filed within 30 days of the end of each calendar quarter. 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.

(g) 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.

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

(i) *Confidentiality.* (1) 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:

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

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

(2) 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.

§ 572.202 [Redesignated as § 572.706 and Amended]

23. 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.

§ 572.703 [Redesignated as § 572.707 and Amended]

24. Section 572.703 is redesignated 572.707, and the reference to ''§ 572.702'' in the introductory text is revised to read ''§ 572.706.''

§ 572.704 [Redesignated as § 572.909 and Revised]

25. 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) A request for such a waiver must be approved in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver 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.

26. A new § 572.702 is added to read as follows:

§ 572.702 Agreements subject to Monitoring Report requirements.

(a) 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:

(i) *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.

(2) *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.

(b) 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 Economics and Agreement 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 Economics and Agreement 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 quarterly Monitoring Report for the third quarter (July–September) of the previous calendar year.

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

27. A new § 572.703 is added, as follows:

§ 572.703 Monitoring report for Class A agreements.

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

28. A new § 572.704 is added, as follows:

§ 572.704 Monitoring report for Class B agreements.

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

29. A new § 572.705 is added, as follows:

§ 572.705 Monitoring report for Class C agreements.

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

30. A new § 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 Economics and Agreement Analysis, 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.

31. Section 572.902 is revised as follows:

§ 572.702 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.

§ 572.991 [Amended]

32. Section 572.991 is amended by revising the reference to ''the Paperwork Reduction Act of 1980, Public Law 96–511'' to read ''the Paperwork Reduction Act of 1995, Public Law 104–13'' and by revising the reference to ''section 3507(f)'' to read ''section 3507(a)(3).''

33. Appendix A to Part 572 is revised to read as follows:

Appendix A to Part 572—Information Form for Class A/B Agreements and Instructions

Instructions

All agreements between ocean common carriers that are Cass 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. For purposes of the requirements of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires a list of 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 a statement as to 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, an agreement between two or more conference member lines, an agreement between one or more conference member lines 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 a statement as to whether the agreement authorizes the parties to establish a joint service.

Part III(C)

Part III(C) requires a statement as to whether the agreement authorizes the parties to pool cargo or revenues.

Part III(D)

Part III(D) requires a statement as to whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs as defined in 46 CFR 572.104(kk).

Part III(E)

Part III(E) requires a statement as to whether the agreement authorizes the parties to regulate or discuss service contracts.

Part IV

Part IV requires 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. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. *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, Northern Marianas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the procedure described in 46 CFR 572.505. In any such application, the burden shall be on the filing carriers to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The carriers must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

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

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the 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.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

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, 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, a statement of each line's total liner cargo carryings within the geographic area, total liner revenues within the geographic area, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was non-containerized, each line should report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement.

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 a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the same 12-month period used in responding to Part V, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the 12-month period, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was non-containerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. 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 requires a statement of the cargo volume and revenue results experienced by each of the parties to the proposed agreement from each major commodity in each subtrade. 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. Each of the agreement lines is required to provide the number of calls it made at each port over the 12-month period used in responding to Parts V, VI and VII, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IX(A)

Part IX(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires that a representative of the agreement lines sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative 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

Lists 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) *Vessel-Operating Costs*

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

Yes ☐ No ☐

(E) *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 ☐

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

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
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 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 carrying in TEUs or other unit of measurement within the entire geographic area, total revenues within the geographic area, and average revenue per TEU or other unit of measurement. The same 12-month period must be used for each party. The information should be provided in the format below:

TIME PERIOD

Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A		$	$
B		$	$
C		$	$
Etc		$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities 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 total 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, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

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) Total TEUs (or other unit of measurement) carried
(b) Average gross revenue per TEU (or other unit of measurement)
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 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]

	Port	Port	Port	Port	Port
Carrier A.					
Carrier B.					
Carrier C.					
Etc..					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IX

(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, Telex or Fax Number
_____

(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) Firm Name and Business
_____
(4) Business Telephone Number
_____
(5) Cable Address, Telex or Fax Number
_____

(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 _____

34. A new appendix B to part 572 is added to read as follows:

Appendix B to Part 572—Information Form for Class C Agreements and Instructions.

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. For purposes of the requirements of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires a list of 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. Each agreement line is required to state the number of calls it made at each port over the most recent 12-month period for which complete data are available, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IV(A)

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

Part IV(B)

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

Part IV(C)

Part IV(C) requires that a representative of the agreement lines sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative 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

	Port	Port	Port	Port	Port
Carrier A Carrier B Carrier C Etc.					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

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, Telex or Fax Number

_____

(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) Firm Name and Business

_____
(4) Business Telephone Number

_____
(5) Cable Address, Telex or Fax Number

_____

(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 _____

36. A new appendix C to part 572 is added to read as follows:

Appendix C to Part 572—Monitoring Report for Class A Agreements and Instructions

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 I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of 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 indicate whether the agreement authorizes the parties to operate as a conference.

Part IV

Part IV requires 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 calendar quarter. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

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 line 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, Northern Marinas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the provisions described in 46 CFR 572.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternate definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form filing for the agreement.

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

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the calendar quarter, divided by the total liner movements in the entire agreement scope or in the 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.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

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 each agreement member line's total liner cargo carryings within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of noncontainerized liner cargo, and average revenue per unit of measurement.

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 a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the calendar quarter, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the calendar quarter, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was noncontainerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. 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 requires a statement of the cargo volume and revenue results experience by each of the agreement lines from each major commodity in each sub-trade during the calendar quarter. 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 is answered ''YES.'' Each conference line is required to indicate the extent to which it 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 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 requires each of the agreement lines to indicate any change in the nature or type of service it provided at any port within the entire geographic range of the agreement during the calendar quarter.

Part X(A)

Part X(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part X(B)

Part X(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative 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 Conference Agreements

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

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 agreement sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	X,XXX	XX%

MARKET SHARE REPORT FOR CALENDAR QUARTER—Continued

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
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 V Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) 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 or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of measurement	Total revenues	Acg. Revenue per TEU or other unit of measurement
A	.....	$	$
B	.....	$	$
C	.....	$	$
Etc	.....	$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the calendar quarter, or list the commodities accounting for 50 percent of the total 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 VIII 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, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

Calendar Quarter

I. Sub-trade A
  A. First leading commodity
  1. Carrier A
  (a) Total TEUs (or other units of measurement) carried
  (b) Average gross revenue per TEU (or other unit of measurement)
  2. Carrier B)
  (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 (a) the total number of independent rate actions taken during the calendar quarter applicable to that commodity moving in that sub-trade; (b) how many of the total were independent rate actions taken to service specific shipper accounts; (c) of those, how many were for non-vessel-operating common carriers, and how many were for shippers' associations. 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
  (i) Number of IA rate actions taken to service specific shipper accounts
  (i)(a) Number taken to service non-vessel-operating common carrier accounts
  (1)(b) Number taken to service shippers' association accounts
  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 party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part X

(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, Telex or Fax Number
_____
(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 _____

37. A new appendix D to Part 572 is added to read as follows:

Appendix D to Part 572—Monitoring Report for Class B Agreements and Instructions.

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 I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of 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 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 calendar quarter. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

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 U.S. Virgin Islands.

Pacific—Includes all ports in the State of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marinas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the provisions described in 46 CFR 572.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individuals countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternate definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form filing for the agreement.

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

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

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized cargo, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

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 salings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part IV

Part IV requires each agreement member line's total liner cargo carrying within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carrying of containerized liner cargo (measured in TEUs) during the calender quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized cargo, and average revenue per unit of measurement.

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 each of the agreement member lines to indicate any change in the nature or type of service it provided at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI(A)

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

Part VI(B)

Part VI(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative 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 CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
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 or other unit of measurement) 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 or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A	.....	$	$
B	.....	$	$
C	.....	$	$
Etc	.....	$	$

Part V Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

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, Telex or Fax Number

_____
(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 _____

38. A new appendix E to part 572 is added to read as follows:

Appendix E to Part 572—Monitoring Report for Class C Agreements and Instructions

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 I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of 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 a statement of 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 name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part IV(B)

Part IV(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative 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 party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

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, Telex or Fax Number

_____
(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instruments 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 _____

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–6600 Filed 3–20–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–111; RM–8652, RM–8704]

Radio Broadcasting Services; Athens and Atlanta, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Atlantis Broadcasting Co., LLC, allots Channel 242A at Atlanta, Illinois, as the community's first local aural transmission service (RM–8704). We also deny the mutually exclusive proposal filed by WMSI, Inc., proposing the allotment of Channel 241A at Athens, Illinois, as the community's first local aural transmission service (RM–8652). *See* 60 FR 39143, August 8, 1995. Channel 242A can be allotted to Atlanta in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) southwest to avoid short-spacings to the licensed sites of Station WHOW-FM, Channel 240A, Clinton, Illinois, and Station KIHT(FM), Channel 242C1, St. Louis, Missouri, and to the application site (40–40–11 and 89–53–34) for Channel 243A, Farmington, Illinois. The coordinates for Channel 242A at Atlanta are North Latitude 40–13–22 and West Longitude 89–17–04. With this action, this proceeding is terminated.

DATES: Effective May 2, 1996. The window period for filing applications will open on May 2, 1996 and close on June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–111, adopted March 5, 1996, and released March 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Atlanta, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc.96–6795 Filed 3–20–96; 8:45 am]

BILLING CODE 6712–01–F