limitation, collection of freight rates and charges, equipment charges, detention and demurrage charges) jointly and severally against entities that are not party to, and have not agreed to be bound by the bill of lading. The Commission has been advised by third-party logistics providers, harbor truckers, stevedores, customs brokers and freight forwarders, many of whom have no connection to the cargo or the shipment, other than providing service to entities that may own or have a proprietary interest in the cargo covered by a VOCC’s bill of lading, that VOCCs seek payment from such third parties for rates and charges pursuant to the terms and conditions of the bill of lading. Allegations have also been received that VOCCs threaten to discontinue allowing such third parties to provide service for future shipments unless amounts due on current shipments are paid.

This issue was raised in Docket No. 19–05, Interpretive Rule on Demurrage and Detention Under the Shipping Act by several commenters, including the New York New Jersey Freight Forwarders and Customs Brokers, the National Customs Brokers and Freight, Forwarders Association, the Agricultural Transportation Coalition, as well as other industry participants since the issuance of the Final Rule. As noted in the Final Rule, “the Commission’s emphasis in the NPRM that ocean carriers bill the correct party reflected concerns raised by truckers that they were being required to pay charges that were more appropriately charged to others.” 85 FR 29638, at 29662 (May 18, 2020). Several commenters reiterated these concerns. AgTC contended that “carriers should impose detention and/or demurrage on the actual exporter or importer customer with whom the carrier has a contractual relationship.” The New York New Jersey Foreign Freight Forwarders & Brokers Association asserted that VOCCs define the term “merchant” in their bill of lading too broadly, resulting in party being billed for demurrage and detention “regardless of whether they are truly in control of the cargo when the charges were incurred.” Id.

The Commission clarified that one of its goals for the Interpretive Rule “was to emphasize the importance of ocean carriers and marine terminal operator bills aligning with contractual responsibilities.” Id. In doing so, the Commission noted that it “does not believe it is appropriate in this interpretive rule to prescribe” specific billing practices, or to address the application of the merchant definition as it related to such practices. Id. The Commission further noted it would address such issues in the context of particular facts, considering all relevant arguments. Although the Commission incorporated reference to certain billing practices and regulations in the Final Rule, it declined to prescribe specific billing practices or regulations which would be deemed reasonable under 46 U.S.C. 41102(c).

General contract law principles provide that one party cannot enforce a contract against another who did not assent to be bound by its terms and conditions. This can include situations where one party attempts to bind another party with unilaterally defined terms. Accordingly, the Commission has determined to request public comment on the manner in which VOCCs are defining the term “Merchant” and enforcing that definition in their bills of lading.

The purpose of the inquiry is to determine whether such carrier enforcement (i.e., seeking to collect freight and other charges) is unfairly or unjustly wielded against third parties who have not directly contracted with the VOCC nor assented to be bound by the contract of carriage. The Commission encourages all interested parties, including VOCCs, shippers, ports, maritime terminal operators, ocean transportation intermediaries, truckers, stevedores or customs brokers to submit comments or to identify information relevant to the manner in which VOCCs have applied their respective definitions of “Merchant.” As part of this NOI, the Commission will also be contacting certain VOCCs to provide information about the manner in which they have defined and applied their definition of a “Merchant.”

The Commission will consider relevant comments submitted by any party. Along with comments, commenters should provide their name, title/position, contact information (e.g., telephone number and/or email address), name and address of the company or other entity and the type of company or entity (e.g., carrier, exporter, importer, trade association, etc.).

Responses to the NOI will help the Commission ascertain more precisely the practices of VOCCs, including whether they may be imposing liability on entities who may not have assented to be bound to the terms and conditions of a VOCC’s bill of lading, and in determining whether additional analyses or action by the Commission may be necessary.

By the Commission.
FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Consumer and Stakeholder Surveys (FR 3073; OMB No. 7100–0359).

FOR FURTHER INFORMATION CONTACT: Rachel Dickon, Secretary.

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Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection


Frequency: As needed.

Respondents: Consumers and other stakeholders.

Estimated number of respondents:
Consumer quantitative surveys (medium): 3,000; consumer quantitative surveys (large): 6,000; consumer qualitative surveys: 50; stakeholder quantitative surveys: 1,500; stakeholder qualitative surveys: 50.

Estimated average hours per response:
Consumer quantitative surveys (medium): 0.25; consumer quantitative surveys (large): 0.4; consumer qualitative surveys: 1.5; stakeholder quantitative surveys: 0.25; stakeholder qualitative surveys: 1.5.

Estimated annual burden hours:
Consumer quantitative surveys (medium): 3,000; consumer quantitative surveys (large): 4,800; consumer qualitative surveys: 600; stakeholder quantitative surveys: 3,000; stakeholder qualitative surveys: 600; total: 12,000.

General description of report: The surveys in this collection gather quantitative and qualitative information directly from individual consumers or households (consumer surveys) on consumer finance topics. This collection also gathers quantitative and qualitative information on current and emerging community economic issues from stakeholders (stakeholder surveys). Examples of stakeholders include community groups, community development organizations, nonprofit service providers, faith-based service organizations, public sector agencies, small business owners, health care organizations, food banks, K–12 public and private schools, community colleges, community development financial institutions, credit unions, banks, and other financial institutions and companies offering financial products and services. While these surveys are ongoing, the frequency and content of the questions may change depending on economic conditions, regulatory or legislative developments, as well as changes in technology, business practices, and other factors affecting consumers, stakeholders, and communities.

Legal authorization and confidentiality: The FR 3073 is authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) “maintain long run growth of the monetary and credit aggregates commensurate with the economy’s long run potential to increase production, so as to promote effectively the goals of the maximum employment, stable prices, and moderate long-term interest rates.” Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks “with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.” The information collection under the FR 3073 is used to fulfill these obligations.

In addition, the Board is responsible for implementing and drafting regulations and interpretations for various consumer protection laws. The information obtained from the FR 3073 may be used in support of the Board’s development and implementation of regulatory provisions for these laws. Therefore, depending on the survey questions asked, the FR 3073 may be authorized pursuant to the Board’s authority under one or more of those consumer protection statutes.

The ability of the Board to maintain the confidentiality of information provided by respondents to the FR 3073 surveys will have to be determined on a case-by-case basis depending on the type of information provided for a particular survey. Some of the information collected on the surveys may be protected from Freedom of Information Act (FOIA) disclosure by FOIA exemptions 4 and 6. Exemption 4 protects from disclosure trade secrets and commercial or financial information, while Exemption 6 protects information “the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

Current actions: On July 21, 2020, the Board published a notice in the Federal Register (85 FR 44078) requesting public comment for 60 days on the extension, without revision, of the FR 3073. The comment period for this notice expired on September 21, 2020. The Board did not receive any comments.


Michele Taylor Fennell,
Assistant Secretary of the Board.