

ORIGINAL

(S E R V E D)
(January 22, 2001)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

Docket No. 01-01

THE IMPACT OF THE OCEAN SHIPPING REFORM ACT OF 1998

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission (“FMC” or “Commission”) is issuing this Inquiry to solicit information and comments concerning the impact of the Ocean Shipping Reform Act of 1998 on all sectors of the international liner transportation system. These comments will assist the Commission’s analysis and evaluation of the new Act’s effects during its first two years in force. That analysis and evaluation will be incorporated into the Commission’s ongoing Ocean Shipping Reform Act Impact Study, which is scheduled to be released in the summer of 2001.

DATES: Submit an original and one copy of comments (paper), or e-mail non-confidential comments on or before March 12, 2001.

ADDRESSES: Address all comments concerning this Inquiry to:

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol St., N.W., Room 1046
Washington, D.C. 20573-0001

or e-mail non-confidential comments to:

secretary@fmc.gov

(e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications)

FOR FURTHER INFORMATION CONTACT:

Florence A. Carr, Deputy Executive Director
Office of the Executive Director
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Telephone: (202) 523-5800
E-mail: florence@fmc.gov

SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission is seeking information and comments from interested parties regarding the impact of the Ocean Shipping Reform Act of 1998 ("OSRA") on all sectors of the international liner transportation system. OSRA took effect on May 1, 1999.

Approximately five months later, in late September 1999, FMC Chairman Harold Creel announced that the Commission was planning "to perform an overall assessment of OSRA – both what has happened as a result of this new Act and the impact of those occurrences." He noted that the focus of the future study would be on the industry's response to the new freedoms and flexibility provided by OSRA.

Six months later, the Commission publicized the relevant details of its planned OSRA Impact Study. The Commission noted that the study would examine several key areas, including: (1) service contracting under OSRA, (2) the activities of carrier agreements, (3) the impact of OSRA on ocean transportation intermediaries, shippers' associations, and other

affected parties, and (4) tariff accessibility and accuracy. The Commission also advised that an interim status report would be made public in the summer of 2000, with the final report to be published in the summer of 2001.

On June 22, 2000, the Commission released, and made available on its internet web-site at <http://www.fmc.gov>, the interim status report covering the first year under OSRA. That report highlighted OSRA's most prominent provisions and furnished details on the industry's initial experiences with service contracts, carrier use of antitrust immunity, and tariff accessibility.

This Notice of Inquiry ("NOI") is being issued to ensure that the Commission's final report provides a complete and useful picture of the impact of OSRA. Providers and users of international liner transportation are invited to provide information concerning their experiences under OSRA and their insights into how the new legislation is affecting them. The views of other interested parties similarly are requested.

To promote maximum participation, the NOI questions will be made available on the Commission's web-site at <http://www.fmc.gov> in a downloadable text file. They also can be obtained by contacting the Commission's Secretary, Bryant L. VanBrakle, by telephone at (202) 523-5725 or by e-mail at secretary@fmc.gov -- please indicate whether you would prefer a hard copy or an e-mail copy of the NOI. In addition, non-confidential comments may be submitted as an attachment to an e-mail submission. These attachments must be submitted in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications.

While the Commission intends that the OSRA Impact Study be as thorough as possible, and therefore encourages prospective commenters to address all relevant questions with detailed comments, *there is no requirement that participants answer all NOI questions.* Commenters are free to answer only those questions where they have direct experience or specific views.

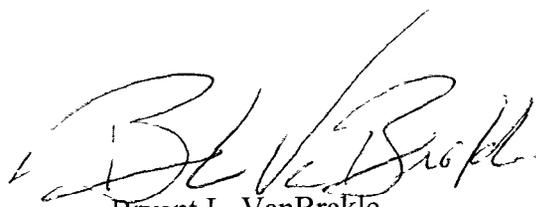
Additionally, although most of the NO1 questions were designed to elicit responses from a broad range of industry participants, a few of the questions are addressed to specific industry sectors, for example vessel-operating common carriers (“VOCCs”), non-vessel-operating common carriers (“NVOCCs”), or shippers (whether individual beneficial owners, shippers’ associations or NVOCCs), and should be answered only by the sector specified. Each of these is designated by **bold** lettering at the head of those questions. All commenters are encouraged to complete at least those parts of the NO1 which deal with their specific industry sector, and to respond to as many of the non-sector-specific questions as possible.

The Commission anticipates that most filed comments will be made available to the public. In the Commission’s view, public availability of comments to the Inquiry will help maximize public awareness of how OSRA is affecting the liner transportation in the U.S. trades and is to be encouraged. Nevertheless, some commenters may wish to include some commercially sensitive information as necessary or relevant, whether by way of explicating commenters’ experience under the Act or detailing its impact in practical terms. Such information should be identified as commercially sensitive by the filer and the document or relevant portions thereof must be marked as confidential. Confidential treatment must be specifically requested for those marked portions, and one additional copy of the comments with the confidential portions redacted must be provided along with the original and one copy of the complete comments. (Confidential comments should not be submitted by e-mail). To help assure that all potential commenters will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowable by law for submissions, or parts of submissions, for which the parties request confidentiality. Any questions regarding such confidential treatment should be directed to the Commission’s

Secretary, Bryant L. VanBrakle, at the telephone number or e-mail address provided above.

NOW THEREFORE, it is Ordered that Notice of this Inquiry be published in the ~~Federal~~
Register.

By the Commission.



Bryant L. VanBrakle
Secretary

Attachment

ATTACHMENT – NOI QUESTIONS

Commenters must provide the following information with their submissions: (a) their organization's name, (b) the category of organization (e.g., VOCC, Shipper, Shippers' Association, NVOCC, Freight Forwarder, Port Authority, Marine Terminal Operator ("MTO"), Labor Union, Other), (c) the name of the commenting official, (d) the signature of the commenting official (paper copy only), and (e) a contact telephone number for the commenting official.

The Commission's specific questions are set forth below by topic area. Again, commenters are free to choose which questions they desire to answer.

SERVICE CONTRACTING

Changes in contracting

1. Has your company's use of service contracts expanded under OSRA? Why or why not? If so, please include the approximate increase (by volume of cargo shipped) of such use, by relevant trade lane.
2. Has OSRA changed the way you negotiate contracts? If so, in what ways (for example, shifting from conference contracts to individual contracts, or changes in the negotiating process itself)? If not, why not? Are your contracts being amended more frequently under OSRA? If so, why?
3. Have the types of contracts your company signs (single trade, multi-trade, global, multi-shipper, multi-carrier) changed under OSRA? [Note: A *multi-trade* contract is one that covers multiple US trade lanes in one contract, but no foreign-to-foreign trades. A global contract is one that covers multiple trades, including foreign-to-foreign trades.]

4. Has the content of your service contracts changed (for example, the inclusion of new types of clauses) under OSRA? If so, what are those changes? Why have they occurred?

5. Have OSRA's service contracting provisions (for example, the end of public filing of rates and certain terms, the removal of conference authority to regulate members' contracts, allowing explicit confidentiality agreements in contracts) had any impact on your contract rates? Please explain, and include relevant illustrative examples where possible.

6. Are there any service contract issues that you believe are likely to become of increasing importance in the next 5 years? For example, issues concerning space guarantees, service commitments, standardization of contract formats, or liability clauses. Please explain.

7. **For shippers, shippers' associations, and NVOCCs:** For the following categories of contract terms, please indicate the type of change, if any, that has occurred in the contracts you have signed since the implementation of OSRA (May 1, 1999). (Circle the appropriate responses), and briefly explain.

	Less Satisfactory	Unchanged	More Satisfactory
Space guarantees	1	2	3
Service commitments	1	2	3
Liquidated damage terms	1	2	3
Breach of contract terms	1	2	3
Range of commodities included	1	2	3
Level of Rates and Charges	1	2	3
Other (Please Specify)	1	2	3

Explanation:

8. ***For VOCCs and NVOCCs:*** In their role as shippers, have NVOCCs been able to use (a) the initial contract negotiation process, and/or (b) the ability to subsequently amend contract rates (e.g., use “bullet” rates), to benefit from OSRA’s contracting reforms? Please explain your response (referring to specific trade lanes where relevant).

Contract confidentiality

9. What significant effects, if any, has OSRA’s elimination of public filing of contract rates and services had on the way your company does business? Please explain.

10. In the absence of public filing of service contract rates and terms, has your company been able to adequately identify the range of ocean shipping rates relevant to your business from alternative information sources? If so, what sources? If not, what has been the effect on your business?

11. Has your company sought to negotiate specific confidentiality measures in the contracts you have signed since OSRA took effect? If so, were you able to negotiate what you consider adequate confidentiality measures (including pre-negotiation confidentiality agreements, if sought)? Please explain.

12. Please estimate the percentage of the service contracts that your company signs that (a) include a confidentiality clause or (b) are covered by a pre-negotiation confidentiality agreement.

Was the inclusion of such clauses or pre-negotiation agreements, if any, generally made at your company's request or by the other party?

13. In your company's experience to date, has breach of service contract confidentiality been a problem? If so, please explain how you dealt with such breaches.

AGREEMENT ACTIVITY/VOLUNTARY GUIDELINES

14. In your company's experience, have the rate and/or surcharge activities of discussion agreements (or conferences), under OSRA, generated either significant problems or benefits for your business? Please explain your response and indicate the trade lane(s) to which it applies.

15. In your experience, has liner shipping consolidation via acquisition, merger, or the formation of operational alliances affected prices and/or service? If so, in what ways and resulting in what benefits or problems?

16. (A) ***For VOCCs:*** Have (a) discussion agreements, (b) global alliances, and (c) space charter/sharing agreements led to more efficient use of carrier assets? Produced other benefits? Any problems? Please explain for each category.

16. (B) ***For shippers, shippers' associations, freight forwarders, and NVOCCs:*** In your company's experience to date, what benefits or problems, if any, have (a) discussion agreements, (b) global alliances, (c) space sharing/charter agreements produced? Please explain your response for each category with as much specificity as possible.

17. How has the use of OSRA's authority for VOCCs to agree upon voluntary service contract guidelines affected your company's business, if at all? Please explain.

SHIPPERS' ASSOCIATIONS, INTERMEDIARIES, AND PORT TRUCKING ISSUES

18. How has OSRA affected shippers' associations (if at all) with respect to membership growth, consolidation among associations, and the development of new activities or membership services?

19. ***For shippers' associations and NVOCCs:*** In the period since OSRA took effect (since May 1, 1999) has your business grown, declined, or remained largely unchanged? If it has grown or declined, please indicate the percentage change in volumes shipped. Has OSRA contributed to that change? Please explain.

20. ***For NVOCCs:*** What effects, if any, have the statutory provisions of OSRA, and the commercial environment in which they apply, had on your operations as an NVOCC (including your offering of any value-added services) and/or your clients? Please support your response with as much detail as possible and explain which provisions (or factors) have had the most significant impact on your operations.

21. ***For VOCCs:*** For the last calendar year, approximately what percentage (by TEUs carried) of your total cargo carried in the US trades (total import *and* export) was NVOCC cargo?

Approximately what percentage of that NVOCC cargo was full-container-load cargo (offered but not consolidated by an NVOCC), and what percentage was less-than-container-load cargo that the NVOCC had consolidated? To the extent that the answers may vary significantly by trade lane, please explain.

22. ***For VOCCs:*** Has there been a change (increase or decrease) in the percentage of NVOCC cargo carried by your line since OSRA took effect, as compared with pre-OSRA NVOCC carriage? If so, what was the change and was it a result of OSRA's implementation or other factors? Please explain.

23. What impact, if any, has the implementation of OSRA had on the port trucking industry?

TARIFF USE, ACCESS, AND ACCURACY

24. In the last 6 months, has your company tried to access carrier (VOCC and/or NVOCC) tariffs, or MTO schedules? If so, which kind (VOCC, NVOCC, or MTO), for what purposes, and what was your experience? If not, why not?

25. Are the VOCC and NVOCC tariffs in which you are interested, if any, currently accessible to you at what you consider a reasonable cost? Please explain and support with specific examples if possible.

26. Do VOCC and NVOCC tariffs that you have accessed in the last 6 months, if any, provide accurate and useful information? Please explain and support with specific examples if possible.

27. Are the service contracts that your company has signed, if any, linked to tariffs? If so, please describe the nature of such links and explain briefly their purpose.

28. *For shippers, shippers' associations, and NVOCCs:* If your service contracts are linked to VOCC tariffs, do you have adequate access to those tariffs? If not, please explain.

29. In general, have you found it (a) easier, (b) about the same, or (c) more difficult to access carrier (NVOCC and VOCC) tariffs, and MTO schedules since OSRA, than prior to OSRA? Please explain.

OTHER

30. What impact, if any, has the implementation of OSRA had on potentially unfair foreign shipping-related practices (for example, pricing practices, business restrictions, foreign laws)? Are there any identifiable areas of continuing concern?

31. Has the growth of e-commerce offerings (including, but not limited to, on-line space auctions) created any regulatory concerns for your company? If so, please explain.

32. In your experience, has the burden of regulation faced by your company been reduced,

increased, or been unaffected by the implementation of OSRA? Please explain and give relevant examples where possible.

33. Are there any OSRA-related regulatory issues that you believe should be considered for future Commission review?

34. Overall, has the *net* impact of OSRA on your company been positive or negative? (Circle the most accurate description.) Please explain briefly.

Very negative	Somewhat negative	Neutral	Somewhat positive	Very positive
1	2	3	4	5

Explain: _____

35. Are there any other ways in which the implementation of OSRA has affected your business or industry that have not been addressed in the preceding questions? If so, please explain.