

FEDERAL MARITIME COMMISSION

Docket No. 01-08

THE IMPACT OF THE GOVERNMENT PAPERWORK ELIMINATION ACT AND THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

COMMENTS OF OCEAN COMMON CARRIER AGREEMENTS

The agreements of ocean common carriers listed in Appendix A hereto and their member lines ("Agreements"), through counsel, hereby submit their response to the Notice of Inquiry of the Federal Maritime Commission ("FMC") in the above-captioned proceeding ("NOI"). The Agreements may be contacted through counsel.

Question #1. Please identify (by FMC form number) the forms/information collections which you or your organization are required to submit to the FMC. For each form identified please rate the sensitivity of the data and the transaction as either high, medium or low, using the following definitions for each.

High sensitivity - the data/transaction is of critical concern, may contain proprietary information, or consists of data files that require safeguarding.

Medium sensitivity - the data/transaction is an important concern but not necessarily paramount in the organization's priorities. This includes data whose release or distribution outside of the organization or the Commission must be controlled and protected against acts as malicious destruction, unauthorized alteration or disclosure.

Low sensitivity - some minimum level of security is required, but not the same level as the previous two categories, e.g., data files which have value to an originator only in their raw form, or data requiring safeguarding by the Privacy Act but which contain information that is nearly all in the public domain.

Response: The Agreements and their member lines may be required to submit the following forms identified in the NOI:

- Form FMC-1 Organization Information
- Form FMC-83 Service Contracts User Registration Form
- Form FMC-150 Information Form for Class A/B Agreements
- Form FMC-151 Information Form for Class C Agreements
- Form FMC-152A Monitoring Report for Class A Agreements
- Form FMC-152B Monitoring Report for Class B Agreements
- Form FMC-152C Monitoring Report for Class C Agreements

Forms FMC-1, FMC-83, FMC-151 and FMC-152C are generally considered to be low sensitivity. Forms FMC-150, FMC-152A and FMC-152B are considered high sensitivity because they contain proprietary revenue information that is considered highly confidential. However, the Agreements do not believe that any electronic filing system adopted by the FMC should provide varying levels of security based solely on the perceived sensitivity of the data submitted via that system.

Sections 6(j), 8(c)(2) and 15 of the Shipping Act of 1984, as amended, as well as 46 C.F.R. §§530.4, 535.608, 535.701(i) and 535.708, afford confidential treatment to service contracts, agreement minutes, monitoring reports and information submitted in connection with agreements. The Agreements believe that where data submitted to the FMC is afforded confidential treatment by law, any electronic filing system that may be adopted by the FMC must contain safeguards that will maintain the confidentiality of that data regardless of its

perceived sensitivity (i.e., even a Class C monitoring report that is considered to be low sensitivity must remain confidential). Having said this, the Agreements would have no objection to an electronic filing system that provides a lower level of security to data that is not afforded confidential treatment by law and is not otherwise sensitive (e.g., Form FMC-1).

2. Are you or is your organization now using or planning to use any form of electronic signature technology as part of your business activities? If yes, briefly describe the context in which it is used or planned to be used and indicate how frequently it may be used.

Response: The use of electronic signature technology varies from carrier to carrier and agreement to agreement. The areas in which electronic signatures appear to have the greatest potential for frequent use are the execution of service contracts and bills of lading. However, FMC regulations require that carriers and carrier agreements obtain original signatures on service contracts and maintain those originals in their files. See 46 C.F.R. §530.15. In addition, electronic signatures are not recognized in all jurisdictions or for all purposes. For example, P&I Clubs and banks have raised concern with respect to the use of electronic signatures. Although the Agreements believe that the use of electronic signatures is likely to expand in the future, there are a number of areas in which business practice has not yet caught up with technology in terms of accepting such signatures.

3. Are you or is anyone in your organization familiar with Public Key Infrastructure ("PKI") and Automated Certificates of Electronic Signature? If yes, indicate whether you are using or planning to use PKI electronic signature certificates.

Response: No comment.

4. What benefits, if any, do you or your organization anticipate if the Commission establishes an electronic option for the forms/information collections you identified in question 1?

Response: The Agreements expect that the time and expense required to prepare and to submit these items generally would be decreased. However, a greater savings in time and expense would likely be realized if the Agreements also were permitted to make other submissions to the FMC electronically, most notably the filing of the minutes of agreement meetings. While 46 C.F.R. §535.701(e) appears to permit the electronic filing of minutes, the Agreements understand that there is no formal system for submitting minutes electronically and that this option is not widely utilized. Moreover, it is not clear what security measures are in place to protect the confidentiality of minutes submitted electronically.

Because of the efficiencies that could be realized from the electronic submission of agreement minutes, the Agreements urge the FMC to replace what appears to be the present *ad hoc* approach to filing minutes with a more defined electronic filing system that would permit the electronic filing not only of the forms identified in the NOI, but also of agreement minutes.

5. What additional risks to the data or the transaction, if any, do you or your organization anticipate should the Commission establish an electronic reporting option for the forms/ information collections you identified in question 1?

Response: Assuming the FMC adopts security measures that will protect the confidentiality of data submitted electronically (see response to question #1 above), the Agreements do not anticipate any additional risks.

6. With respect to the forms/information collections you identified in response to question 1, what obstacles or barriers do you or your organization expect may impede the Commission's successful establishment of electronic options?

Response: The Agreements see no obstacles or barriers to establishing a system which would permit the electronic filing of the forms identified in the response to question #1 or to agreement minutes. Indeed, the Agreements understand that Forms FMC-1 and FMC-83 are presently filed electronically.

7. With respect to the forms/information collections you or your organization are required to provide to the FMC, which of the issues listed below pose the most concern for you should that same form/information collection be provided on an electronic platform (meaning you can access the form, complete it, sign it, and transmit the completed/signed document back to the FMC electronically)? Briefly explain.

- a. **Confidentiality** - Ensuring that information can be read only by authorized entities, including possible encryption of information for privacy/confidentiality or security purposes.
- b. **Integrity** - Ensuring that data is unchanged from its source and has not been accidentally or maliciously altered. This includes but is not limited to:
 1. **Authentication** - Ensuring that transmissions and messages, and their originators, are authentic, and that a recipient is eligible to receive specific categories of information. This includes possibly having a third party

verify that the content of a message has not been changed in transit, and that it is what it purports to be.

2. Nonrepudiation - Ensuring strong and substantial evidence is available to the sender of data that the data has been delivered (with the cooperation of the recipient), and to the recipient evidence of the senders' identity, sufficient to prevent either from successfully denying having sent or received the data. This includes the ability of a third party to verify the integrity and origin of the data. Technical nonrepudiation binds a user to a transaction in a fashion that provides important forensic evidence in the event of a later problem.

c. Availability - Ensuring that the information technology resources (system or data) are available on a timely basis to meet mission/business requirements or to avoid substantial losses. Availability also includes ensuring that resources are used only for intended purposes.

Response: The forms the Agreements are required to submit typically are not time-sensitive. In circumstances where submission may be time-sensitive (e.g., Form FMC-1), it is not frequent. Therefore, availability is not a significant concern. However, in order to maximize the benefits of electronic filing, any electronic filing system should be based on existing hardware/software to the greatest extent possible. An electronic filing system that requires a significant investment by filers in new hardware and/or software may discourage filers from taking advantage of such a system.

For the most part, the forms the Agreements are required to submit are informational rather than contractual in nature. The Agreements believe that given the nature of these submissions, there is little incentive for non-authentic originators to generate such submissions. Accordingly, the authentication

aspect of integrity would not appear to be a significant concern with respect to such submissions.

However, the Agreements believe that any filing system should include a means by which the FMC acknowledges receipt of the transmission, much as it now date and time stamps paper submissions. This capability would provide electronic filers with assurance that their submissions have been received by the FMC and help to avoid confusion about the status of a particular submission. The electronic filing system the FMC has established for service contracts is a useful model in this regard, as it indicates that files being transmitted have been accepted and then provides an upload status report. Similar capabilities should be part of any other electronic filing system established by the FMC.

As noted above, the primary concern of the Agreements is that the confidentiality afforded them by statute and regulation be preserved.

8. Any other comments?

The Agreements believe that the FMC should permit electronic filing to the greatest extent possible. Electronic filing will likely reduce the time and expense of preparing the various submissions, as well as

the time and expense of transmitting those submission to the FMC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wayne R. Rohde". The signature is written in a cursive style with a large initial "W".

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Appendix A

OCEAN COMMON CARRIER AGREEMENTS
PARTICIPATING IN THE RESPONSE IN FMC DOCKET NO. 01-08¹

1. Transpacific Stabilization Agreement and its member lines:

American President Lines, Ltd./APL Co. PTE Ltd.
A.P. MOLLER-MAERSK SEALAND
CMA CGM S.A.
Cosco Container Lines Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie GmbH
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
P&O Nedlloyd Limited/P&O Nedlloyd B.V.
Yangming Marine Transport Corp.

2. Westbound Transpacific Stabilization Agreement and its member lines:

American President Lines, Ltd./APL Co. PTE Ltd.
A.P. MOLLER-MAERSK SEALAND
China Ocean Shipping (Group) Co.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie GmbH
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
P&O Nedlloyd Limited/P&O Nedlloyd B.V.
Yangming Marine Transport Corp.

¹ In the event any comments that may be submitted by an individual carrier listed in this Appendix A may be inconsistent with these comments, the individual comments of that carrier shall supersede these comments with respect to such inconsistent matter.

Appendix A (continued)

3. Trans-Atlantic Conference Agreement and its member lines:

Atlantic Container Lines AB
A.P. MOLLER-MAERSK SEALAND
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Company S.A.
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
P&O Nedlloyd Limited

4. Mediterranean North Pacific Coast Freight Conference and its member lines:

Contship Container Lines Ltd.
Italia di Navigazione, S.p.A.
Zim Israel Navigation Co., Ltd.

5. Hispaniola Discussion Agreement

NPR, Inc.
Crowley Liner Services, Inc.
A.P. MOLLER-MAERSK SEALAND
Tecmarine Lines, Inc.
Ulisses Lines Inc.
Seaboard Marine Ltd.
Tropical Shipping and Construction Co., Ltd.
Automarine, S.A.