

OCWGA at 24. PONL suggests that the Commission answer this question by reviewing its records pertaining to requests for copies of agreements and comments on filed agreements. PONL at 10.

ILA would like certain matters in agreement filings to be made public and for agreements filed with the Commission (and noticed in the **Federal Register**) to document the origins, destinations, and points of entry and departure of cargo accurately and in an easily understandable manner that will not handicap it in administering and enforcing the provisions of its own collective bargaining agreements. ILA at 1. ILA argues that not making such information publicly available would hamper its ability to detect the movements of containers destined for a designated port area but off-loaded at different port. *Id.* at 1–2. ILA states that it requires access to the carriers' electronic systems, and that it is concerned by some carriers' practice of making certain information public but masking it in digitized codes. *Id.* at 2. ILA maintains that it is not seeking to have the Commission require disclosure of competitive rates of carriers, their surrogates or allies. *Id.* Although ILA asserts that its labor contracts apply regardless of whether the filed agreement is classified as a "rate agreement" or an "operational agreement," ILA wants the "ability to anticipate and locate the shipments which its contracts entitle its [l]ongshorepersons to handle and which are subject to charges as defined under those agreements." *Id.*

(g) The Commission asked whether it can implement measures to protect commercially sensitive information contained in filed agreements. (NOI Question 7). Some commenters assert that there may be sensitive commercial information in filed agreements that the parties may legitimately need to protect. OCWGA notes that while section 6(a) requires publication in the **Federal Register**, section 6(j) appears to specify a different treatment for section 5 agreements than for "documentary material" submitted under sections 5 and 6. OCWGA at 24–25. It maintains that this may place some procedural restrictions on how the Commission implements its authority to protect such information from disclosure and urges that, "[s]pecifically, in order for information to be unambiguously protected from disclosure, such information must not be required to be included in the agreement required to be filed under section 5." *Id.* PONL opines that the Commission has already implemented measures to protect

commercially sensitive information because it does not require conferences to publicly file minutes and notes that the Commission's exemption authority can shield such information. PONL at 10.

NITL believes that the Commission should not shield from disclosure information that would enable shippers to gain a thorough and complete understanding of the scope of a filed agreement likely to have a substantial impact on competition, such as conference or discussion agreements. NITL at 7. However, NITL asserts that information of a purely operational nature, and not relating to competition may be appropriately protected from public disclosure and should be determined on a case-by-case basis. *Id.*

ILA believes that the Commission should require that agreements filed with it contain provisions which, while neither exposing rates nor other truly confidential data, would allow labor interests to track the movements of containerized cargoes subject to collective bargaining agreements. ILA at 2.

(h) The Commission requested commenters to provide information on how competing concerns of completeness, burden and confidentiality are resolved in the filing requirements of other regulatory agencies. (NOI Question 8). OCWGA notes that no other agency operates under a statutory provision identical to section 6(j) of the Shipping Act but cites some comparable provisions used by other agencies. OCWGA at 26. These include provisions by the Department of Transportation ("DOT") for air carrier agreements, the Surface Transportation Board ("STB") for agreements among railroads, the Federal Trade Commission ("FTC") for general pre-merger notifications and the Securities and Exchange Commission ("SEC") for registration statements for securities. OCWGA notes that under 49 U.S.C. 41308 and 49 U.S.C. 41309(a) the Secretary of Transportation has the authority to exempt from antitrust laws cooperative air carrier agreements filed with it and that to obtain this exemption, an air carrier must file "a true copy * * * and complete memorandum of an agreement." *Id.* OCWGA further notes that DOT has implemented regulations to protect the confidentiality of this information (14 CFR 302.39(b)) which provide a procedure by which a carrier may mark as confidential portions of an agreement and may move to withhold such portion from public disclosure.⁸ *Id.*

⁸ The rule reads, in pertinent part:

OCWGA also cites to 49 U.S.C. 10502 which grants the STB authority to exempt rail carriers from the antitrust laws and directs it to approve and monitor those agreements pursuant to 49 U.S.C. 10704 and 10705. OCWGA urges that 49 CFR 1313.7 and 1313.16 be used as examples for the confidential treatment of agreement information. *Id.* Finally, OCWGA notes that the FTC receives pre-merger notification filings for companies under its jurisdiction and that 15 U.S.C. 18a(h) exempts from disclosure any information filed pursuant to the pre-merger notification requirement, unless relevant to any administrative or judicial action or proceeding. *Id.*

Similarly, PONL notes that the Antitrust Division of the Department of Justice ("DOJ") receives pre-merger filings as well as requests for Business Review Letters and that DOJ may ask filers for more information and prevent disclosure of confidential information. PONL at 10.

PONL and OCWGA observe that the SEC receives securities registrations as authorized by its controlling statute which enumerates all information required to be submitted in the registration, but that SEC regulations allow filers to request confidential treatment by separating the confidential portion from the regulation statement and filing it separately. 17 CFR 230.406(2). PONL at 10; OCWGA at 26.

B. The Proposed Rule

In accommodating the concerns expressed in the comments, the Commission must reconcile what may appear to be conflicting missions of the agency—on the one hand, to exercise the meaningful oversight of agreements to check any abuses arising from antitrust immunity required by section 6 of the Shipping Act, and on the other, to minimize regulatory intrusions and burdens, as required by section 1. Therefore, the Commission proposes the following regulations, which are intended to permit it to exercise effective oversight consistent with the Commission's statutory responsibilities without imposing undue regulatory burdens.

Any person who objects to the public disclosure of any information in any paper filed in any proceeding * * * shall segregate, or request the segregation of, such information into a separate paper and shall file it * * * separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation "Classified or Confidential Treatment Requested Under Sec. 302.39."

14 CFR 302.39(b).