

arguable, therefore, whether the drafters intended to preclude the Commission from protecting sensitive commercial information contained in the agreement itself, it appears unnecessary for the Commission to make any such determination now. As the Commission is now proposing to exempt the information identified by the commenters as potentially sensitive commercial information, we see no need to address this issue further at this time. Therefore, the proposed rule contains no further proposals in this respect. However, commenters may wish to raise this issue, as well as to identify any item of sensitive commercial information which would be included in an agreement required to be filed that is not within the terms listed in section 535.408 or otherwise exempted. Such comments should also address the issue of the Commission's authority to protect commercially sensitive information contained in filed agreements.

III. Information Forms and Monitoring Reports, 46 CFR Part 535, Subparts E and G.

A. Introduction

Currently, when a carrier agreement is filed with the Commission, the Information Form regulations (subpart E of part 535) require that certain historic revenue and/or operational data be furnished for each party to the agreement. The Information Form must accompany the filed agreement. In addition, certain modifications filed as amendments that expand the geographic scope or authority of an existing agreement must also be accompanied by an Information Form at the time of filing. Once an agreement goes into effect under the Shipping Act, the Monitoring Report regulations (subpart G of part 535) require that ongoing revenue and/or operational data on the parties' activities under the agreement be submitted to the Commission for as long as the agreement remains in effect.

The jurisdiction to set rules requiring carrier agreement information is conferred on the Commission by the Shipping Act. Section 5(a) states 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." Further, section 17(a) authorizes the Commission to "prescribe rules and regulations as necessary to carry out" the Shipping Act. Additionally, the Shipping Act gives the Commission the

direct authority to obtain any relevant information from carriers. Pursuant to section 15, the Commission may issue an order to require any common carrier "to file with it any periodical or special report * * * appertaining to the business of that common carrier."³¹

The proposed rule replaces the current regulations with regulations that would require all carrier agreements identified in § 535.201(a) and subject to the forty-five day waiting period to submit an Information Form for the Commission's review upon filing with information and data on the agreement and the authority in the agreement.³² The proposed rule limits the application of the Monitoring Report regulations to require reporting only from parties to agreements with certain authority. For some authority, the Monitoring Report regulations are further limited based on the parties' market share.

The reporting requirements for the proposed Information Form and Monitoring Report have been modified in relation to changes that have occurred in carrier agreements. Reporting requirements that are no longer necessary have been eliminated. New reporting requirements have been added to obtain essential data, such as vessel capacity, from agreements with authority that poses concerns under the Shipping Act. New terms and definitions have also been provided in the instructions of the proposed Information Form and Monitoring Report. These terms and definitions are intended to provide carriers with clearer instructions that should help to improve the accuracy and consistency of the agreement data reported to the

Commission. Commenters are encouraged to review these proposals with this intent in mind, and to suggest further refinements or feasible alternatives to the proposed terms and definitions.

In general, the proposed modifications herein seek to ensure that the Commission receives the most meaningful and reliable agreement data to carry out its statutory responsibilities, without placing an undue regulatory burden on carriers. In this regard, the Commission has incorporated its experience in administering the current Information Form and Monitoring Report regulations. Changes in carrier agreements that have occurred since OSRA became effective have resulted in the changes reflected in the proposed rule. The proposed modifications also reduce, where possible, the reporting burden on the carriers.

B. Background

1. The Current Regulations

The Information Form regulations for carrier agreements were originally established under the Shipping Act in Docket Nos. 84-26 and 84-32 (final rule). Under this rule, depending on the agreement's authority, the Information Form required such data as market share, cargo carriage, and/or planned changes in port calls or services relating to the agreement. The rule did not prescribe standard periodic reporting requirements for carrier agreements after they become effective under the Shipping Act.

The current Information Form and Monitoring Report regulations were promulgated in Docket No. 94-31, *Information Form And Post-Effective Reporting Requirements For Agreements Among Ocean Common Carriers Subject To The Shipping Act of 1984*, 61 FR 11564 (March 21, 1996). The Information Form is used in the agreement review process to analyze the probable economic impact of filed agreements, or certain agreement modifications. Carrier agreements are initially reviewed upon filing to assess their compliance with the Shipping Act, particularly with respect to section 6(g) and the prohibited acts in section 10. Upon review, the Commission determines whether any action under the Shipping Act is necessary within the 45-day waiting period before an agreement becomes effective. In addition, the data submitted in the Information Form provides historic (or baseline) economic figures for analyzing changes that may occur after the agreement goes into effect.

³¹ The Commission has consistently held the view that the most reliable source of information on carrier agreements is directly obtained from the parties to the agreement. In Docket No. 94-31, the Commission stressed "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). See Dkt. No. 94-31, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*, 61 FR 11564, 11565 (March 21, 1996). The Commission further emphasized this point by stating that "the 1984 Act removed the burden of proof in agreement investigations from the carriers, but did not alter the accuracy of the Commission's 1996 observation in the *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." *Id.* at page 11566.

³² "Low market share agreements" defined in section 535.311 of the proposed rule would be exempted from the waiting period requirements, and from the Information Form and Monitoring Report requirements unless otherwise instructed by the Commission.

generally; for nondisclosure of filings generally, 46 CFR 502.119; and for third party comments on agreements, 46 CFR 535.603.