

The Monitoring Report enables the Commission to track and analyze the ongoing economic effects of an agreement after it becomes effective, and accordingly, determine whether any action under the Shipping Act may be necessary. Monitoring Reports also are used to assess the probable economic effects of modifications filed. Monitoring Reports further help the Commission to stay informed of agreement activity in the U.S. trades, and to address agreement issues that might arise in connection with investigations, complaints, inquiries, or petitions for Commission action against an agreement.

The Commission's current regulations require some level of revenue and/or operational data from almost all carrier agreements subject to the Shipping Act. The degree of required data is determined by the agreement's classification. The current regulations classify agreements into three categories: Class A, Class B, and Class C. Upon a showing of good cause by an agreement, the Commission may waive any of the reporting requirements pursuant to sections 535.505 and 535.709.³³ Carrier agreements that fall outside of the classifications set in the current regulations are not obligated to submit the specified agreement information, unless otherwise instructed by the Commission.³⁴

For the Information Form, Class A and B agreements are grouped together as "Class A/B," and are identified in section 535.502(a) as: rate agreements, joint service agreements, pooling agreements, agreements authorizing discussion or exchange of data on vessel-operating costs, and agreements authorizing regulation or discussion of service contracts. Class A/B agreements contain forms of pricing or pooling authority that can have a significant impact on competition. The Commission thoroughly addressed its concerns with the agreement authorities included in the Class A/B category and the potential effects of each of these authorities on competition in its Notice of Proposed Rulemaking ("NPRM") in Docket No. 94–31. *See* Dkt. No. 94–31, 59 FR 62372, 62375–62376 (December 5, 1994).

When a Class A/B agreement is filed for review, an Information Form must

also be filed in accordance with the reporting requirements specified in appendix A of part 535 (section 535.503). These reporting requirements address the following topics relating to the parties activities in the agreement trade: other agreement participation, identification of agreement authority, market share for all liner operators, total average revenue, cargo volume and revenue results for major commodities, and port service. Much of this data must be specified for each sub-trade within the geographic scope of the agreement. The regulations define sub-trade to mean all liner movements between each U.S. port range and each foreign country within the scope of the agreement. The U.S. port ranges are specified separately for the Atlantic, Gulf, and Pacific coasts.

Information Forms for Class C agreements require much less data. Class C agreements contain various forms of operational authority, and are identified in section 535.502(b) as sailing agreements and space charter agreements.³⁵ In its NPRM in Docket No. 94–31, the Commission noted that "[a]lthough such agreements have rarely presented serious regulatory concerns, some oversight is necessitated by section 6(g)'s admonition against agreements that cause unreasonable reductions in service." *Id.* at 62378. Thus, Class C agreements are only required to submit data on the parties' other agreement participation and port service within the agreement trade, in accordance with the reporting requirements specified in appendix B of part 535 (section 535.504).

For Monitoring Reports, however, the current regulations distinguish between Class A and B agreements.³⁶ Class A agreements are identified as those agreements specified in section 535.502(a) with market shares of 50

percent or more in half or more of the their sub-trades (section 535.702(a)(1)). Class B agreements are identified as those agreements specified in section 535.502(a) that do not have market shares of 50 percent or more in half or more of their sub-trades (section 535.702(a)(2)). To account for changes in market share that may alter an agreement's classification, the regulations direct BTA to classify all Class A and B agreements annually based on their second quarter market share data (section 535.702(b)). Class C agreements are also required to file quarterly Monitoring Reports and are identified as those agreements specified in section 535.502(b) (section 535.702(c)).

Class A agreements file the most Monitoring Report data in line with the same sub-trade specificity required for the Information Form, as instructed in appendix C of part 535 (section 535.703). The amount of Monitoring Report data and sub-trade specificity is reduced for Class B agreements, as instructed in appendix D to part 535 (section 535.704). Class C agreements only report on changes in the parties' other agreement participation and port service in the agreement trade, as instructed in appendix E to part 535 (section 535.705). As of August 2003, there were 29 Class A agreements, 51 Class B agreements, and 133 Class C agreements, for a total of 213 classified agreements on file with the Commission.³⁷

Since the current regulations became effective in 1996, carriers have continued to raise issues specifically regarding the Monitoring Report requirements. The Ocean Carrier Working Group Agreement commented on the Monitoring Report requirements in Docket No. 98–26, 64 FR at 11240; Docket No. 01–01, *The Impact Of The Ocean Shipping Reform Act Of 1998; Notice of Issuance of Notice of Inquiry*, 66 FR 7764 (January 25, 2001); and the Commission's *Notice of Request for Public Comments Regarding Extensions to Existing OMB Clearances*, 67 FR 10407 (March 7, 2002).

In sum, carriers have generally voiced concerns about the burden involved in preparing the quarterly sub-trade data for the Monitoring Reports for Class A agreements. To ease this burden, carriers have repeatedly requested that the level of Monitoring Report data for Class A agreements be reduced to the lesser level required for Class B agreements. In support of this request,

³³ The Commission's authority to grant or deny waiver applications is delegated to the Director of the BTA in subpart C of part 501.

³⁴ Such agreements currently include housekeeping agreements, equipment management agreements, portal agreements, credit policy agreements, non-compete agreements associated with acquisitions, and general discussion agreements.

³⁵ The Class C category does not include agreements authorizing capacity management or regulation as currently defined in section 535.104(e). Such authority was intentionally not included in section 535.502. At the time of the Commission's rulemaking, agreements with capacity management or regulation programs also contained rate authority, and therefore, automatically fell within the regulations. Subsequently, the authority for capacity management was withdrawn from agreements or held in abeyance. Presently, no agreements engage in capacity management programs as currently identified in section 535.104(e).

³⁶ Under section 535.702(b), the classification of an agreement as Class A or Class B for purposes of its Monitoring Report obligations is initially based on the market share data reported on the agreement's Information Form pursuant to section 535.503, or on similar data otherwise obtained. Thereafter, before the beginning of each calendar year, the agreement is classified as Class A or Class B for that year, based on the market share data reported on the agreement's quarterly monitoring report for the previous second quarter (April-June).

³⁷ At the same time, there were 24 agreements on file with the Commission that were not subject to the reporting requirements.