

the current regulations provide some degree of this information already. Carrier agreement filings that fall outside of the current classification regulations would also be required to provide this information. However, the number of such filings is very limited. Further, the Commission believes that this information is readily available to carriers and would not require any costly or extensive preparation that could affect or delay the filing of an agreement.

The requirements for narrative statements on the purpose and commercial circumstances of the agreement are new. These statements are not intended to elicit a justification of the agreement. They would simply provide the Commission with a clearer understanding of the parties' collective objectives under the agreement in relation to their services within the agreement trade. It may be that the parties formed an agreement to start a new liner service to expand into a new trade area. Such information would be relevant to the Commission's review of the agreement, but might not be readily apparent by the terms of the agreement without seeking additional information from the parties.

The proposed Information Form retains the existing requirement for a list of the parties' other agreements. The term "other agreements" refers to all other carrier agreements within the geographic scope of the filed agreement in which the parties to the filed agreement are participants. It remains important for the Commission to understand the parties' full authority within the context of all their agreements in a given trade. Given the brevity of the review period established by section 6 of the Shipping Act, it is necessary that the parties supply this information at the outset.

The proposed Information Form continues to require that the parties identify the specific authorities contained in the filed agreement. Authorities identified in the Information Form would now be expanded to include authorities and provisions relating to operational agreements and capacity rationalization. This modification reflects the increased importance and use of such authorities by carriers. Further, in assigning reporting requirements based on the parties' authority, it is important that the full authority of the agreement be identified.

b. Section II

Section II of the proposed Information Form would apply to carrier agreements that contain simple operational

authority including vessel space charter and sailing or service rationalization arrangements. Such authority, however, would not include the establishment of a joint service, or capacity rationalization authority. The proposed Information Form retains the requirement that parties with operational authority provide data on their vessel calls at ports, along with a narrative statement of any changes in port service that are anticipated or planned to occur when the agreement goes into effect. For clarification, however, this requirement would be modified to limit the information required to vessel calls directly related to the parties' liner services covered by the agreement, rather than any or all vessel calls within the agreement trade. Similarly, changes in port service would be modified to mean anticipated or planned changes that the parties would implement under the agreement after it goes into effect, rather than any change in port service within the agreement trade. These modifications would refine the parties' data so that the actual impact of the agreement could be analyzed with greater accuracy.

c. Section III

Section III of the proposed Information Form would apply to carrier agreements with the authority to discuss or agree on capacity rationalization. Section III distinguishes the more complex operational agreements with capacity rationalization authority from the simpler operational authorities identified in section II above. As such, new reporting requirements have been added. To enable the Commission to properly analyze these agreements, parties with capacity rationalization authority would be required to provide, for a calendar quarter period, data on their vessel capacity and percentage of vessel capacity utilization for their liner services that would be covered by the agreement. In order to secure accurate and consistent data, definitions of vessel capacity and capacity utilization are provided in the instructions of the proposed Information Form. In addition, parties with capacity rationalization authority would also be required to provide data on their vessel calls at ports for their liner services that would be covered by the agreement. Lastly, such parties would be required to identify and state any anticipated or planned changes in their vessel capacity and/or liner services (including ports) that would be implemented under the agreement after it goes into effect.

Under the current Information Form regulations, operational agreements

with capacity rationalization authority that do not contain pricing or pooling authority are Class C agreements. As such, the only operational data required from these agreements when filed relates to the parties' port services. As discussed above, however, capacity rationalization authority not only allows the parties to fix the levels of capacity and service as to which they will cooperate in a trade, it also restricts any other collective and individual operations of the parties within the agreement trade. In reviewing these agreements under section 6(g), the Commission is concerned about the likely impact of capacity rationalization authority on both service and rate levels in a trade. To determine this impact, the Commission has found it necessary in the past to request vessel capacity and capacity utilization information from parties to such agreements during the review process.

The proposed Information Form would require this necessary information when the agreement is first filed. The Commission does not believe that these additional reporting requirements would impose any undue burden because the parties readily have this information when entering into such agreements.

d. Section IV

Section IV of the proposed Information Form would apply to carrier agreements with pricing or pooling authority. Section 535.503(b)(4) of the proposed rule identifies the particular authorities contained in agreements which causes them to be subject to reporting information and data under section IV of the Information Form. These authorities are: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters.⁴²

Agreements with any of these authorities would be required to submit data and information on the following topics in section IV: market share, total average revenue, cargo volume and revenue results for the top 10 agreement-wide commodities, vessel capacity and capacity utilization, and port service.

⁴² Carrier agreements with these authorities currently fall under the Class A/B category and are listed as types of agreements.