

i. Market Share

The proposed Information Form retains the requirement for market share data showing all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. The number of sub-trade reports, however, would be reduced by combining the separate U.S. Atlantic and Gulf port ranges into one U.S. port range. Liner services and pricing at U.S. Atlantic and Gulf ports are very similar, which allows these sub-trades to be combined. The different service and pricing circumstances prevalent at U.S. Pacific ports dictate that the Pacific be considered a separate U.S. sub-trade.

ii. Total Average Revenue

The proposed Information Form continues the current requirement that the parties report their total liner revenues, total liner cargo carried, and average revenue within the geographic scope of the agreement. A definition of total liner revenues is provided in the instructions to improve the accuracy and consistency of the parties' revenue data. Without a clear definition, the parties could calculate their total liner revenues differently, which makes it difficult to conduct a proper analysis of the data.

iii. Cargo Volume and Revenue Results for the Top 10 Agreement-Wide Commodities

The proposed Information Form retains, but significantly reduces, the reporting requirements for commodity data. Currently, when a Class A/B agreement is filed, the parties must report their cargo volume and revenue results for each major commodity for each sub-trade within the geographic scope of the agreement. The Commission first established these reporting requirements to incorporate commodity specific data into its impact analysis of agreements with pricing or pooling authority. *See* Docket No. 94-31, 59 FR at 62377. Commodity specific data remains an important component of the Commission's impact analysis of such agreements. The Commission, however, believes that the amount of commodity data reported can be reduced without hindering its ability to gauge the general impact of pricing or pooling agreements. Therefore, the proposed Information Form would eliminate the sub-trade requirement, and instead, would require that parties to pricing or pooling agreements report their cargo volume and revenue results on only the top 10 agreement-wide commodities. Commodity data reported

on an agreement-wide basis, instead of a sub-trade basis, should be readily available to the parties and less burdensome to report. Further, a definition of revenue results is provided in the instructions to improve the accuracy and consistency of the parties' commodity revenue data. To maintain a consistent commodity reporting standard, the requirement that commodities be identified at the 4-digit level of customarily used commodity coding schedules remains. While some parties may not use commodity coding schedules to identify and track their cargo and revenues, such discrepancies should be easier to resolve under the reduced commodity reporting requirements proposed herein.

iv. Vessel Capacity and Utilization

The proposed Information Form adds new reporting requirements for agreements with pricing or pooling authority. Parties to such agreements would be required to report, for a calendar quarter period, their vessel capacity and percentage of vessel capacity utilization for their liner services that would fall under the agreement. Further, the parties would be required to identify and describe any significant changes in the amounts of vessel capacity for their liner services that are anticipated or planned to occur when the agreement goes into effect. For consistency and clarity, the Information Form instructions provide definitions of vessel capacity, capacity utilization, and the term "significant changes in the amounts of vessel capacity."

Parties to rate discussion and conference agreements collectively set freight rates in relation to the supply and demand conditions within trades. Even if these agreements do not contain operational authority, many rate discussion and conference agreements authorize the parties to exchange information and collectively discuss their vessel capacity, capacity utilization, and service levels. These agreements may regularly track and distribute this information to their carrier members. Further, as discussed, the parties may augment the overall rate objectives of their rate discussion or conference agreements by controlling the supply of vessel capacity under their separate operational agreements within trades.

To analyze the likely impact of agreements with pricing or pooling authority accurately, the Commission must examine such authority in close connection with the amounts of vessel capacity supplied by the parties along with their corresponding capacity utilization percentages. For a complete

analysis, the Commission also would need to know whether the parties are planning to significantly alter their vessel capacity levels after the agreement goes into effect. Often, the Commission has requested such information from parties to pricing or pooling agreements during the review process, and after such agreements have become effective as concerns under section 6(g) have arisen. The proposed Information Form would provide the Commission with this necessary information. As such, the Commission would be better able to analyze both the supply and demand conditions in the U.S. trades, and consequently, the potential impact of pricing or pooling agreements on freight rates. Carriers to such agreements are the best source of accurate vessel capacity and capacity utilization information regarding their liner services. The Commission does not believe that the addition of these reporting requirements would impose an undue burden since carriers already routinely track this information for their operations.

v. Port Service

The proposed Information Form retains the requirement that parties to pricing or pooling agreements provide their vessel calls and describe any port service changes that are anticipated or planned to occur when the agreement goes into effect. As with similar modifications, this requirement would be clarified to limit the parties' reporting to only those vessel calls and port service changes relating to their liner services that would fall under the agreement, rather than any or all vessel calls and changes within the agreement trade.

e. Section V

Section V would require that parties to all subject agreements identify contact persons for the Information Form and the agreement, and that the Information Form be certified and signed by a representative of the parties.

3. Monitoring Report Regulations

Subpart G of part 535 of the proposed rule modifies the Monitoring Report regulations to mirror the proposed changes to the Information Form regulations in subpart E of part 535. Agreements subject to Monitoring Reports are identified by the authority contained in the agreement, rather than using the current agreement classifications. Most notably, the proposed rule reduces the number of agreements subject to Monitoring Reports and limits the application of the regulations.