

4. Monitoring Report

Section 535.703(a) of the proposed rule replaces the current Monitoring Report forms with one form in appendix B of part 535 and divides the form into three sections. Section 535.703(b) of the proposed rule would require that parties to an agreement complete each section of the Monitoring Report applicable to the agreement and the authority contained in the agreement. Sections I and II would apply based on the authority contained in the agreement. Section III would apply to all agreements required to submit Monitoring Reports under section 535.702(a) of the proposed rule. The Monitoring Report form would be made available in electronic format using Microsoft Office 2000 (Word and Excel) that could be downloaded from the Commission's home page. Parties may complete and submit their Monitoring Reports in paper format, or in electronic format on diskette or CD-ROM. This procedure will remain available until the Commission has developed and implemented an electronic filing system for such documents.

It is further proposed to stay section 535.701(e) until such time as the Commission has developed and implemented an electronic system for filing Monitoring Reports and Minutes.

a. Section I

Section I of the proposed Monitoring Report would apply to all agreements with the authority to discuss or agree on capacity rationalization. Parties to agreements subject to this section would be required to submit quarterly data on their vessel capacity and capacity utilization. These reporting requirements correspond to the proposed requirements in section III of the Information Form.⁴⁸

Section I would also require that a narrative statement of any changes in vessel capacity and/or liner services (including ports) that the parties plan to implement under the agreement be submitted to the Commission's Director of BTA no later than 15 days after a change has been agreed upon by the parties but prior to the implementation of that change (See section 535.703(c) of the proposed rule). Advance notice of the parties' planned changes in connection with this agreement authority is necessary. The Commission believes it should have more timely notice of such information than quarterly submissions would provide, in order to determine whether action

pursuant to section 6(g) of the Shipping Act is necessary prior to implementation of a harmful reduction in vessel capacity or liner service.

b. Section II

Section II of the proposed Monitoring Report would apply to agreements under which the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: (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.⁴⁹

Parties to agreements subject to this section would be required to submit the following quarterly data and information: market share, total average revenue, cargo volume and revenue results on the top 10 agreement-wide commodities, vessel capacity and capacity utilization, significant changes in vessel capacity, and significant changes in service at ports. These requirements correspond to the proposed requirements in section IV of the Information Form. The proposed Monitoring Report would no longer require quarterly reporting on independent rate actions for parties to conference agreements. With the industry changes which have occurred since OSRA, the Commission no longer believes that a quarterly reporting burden on conference parties to monitor this information is necessary.

Regarding the commodity data requirements in this section, the Commission believes that quarterly information on the top 10 agreement-wide commodities would be sufficient for most agreements subject to this section. The Commission, however, recognizes that exceptional circumstances may arise in which it would be appropriate to require the submission of data on a sub-trade or regional basis, rather than an agreement-wide basis. This may occur when an agreement with extremely high market share covers a broad trade area comprised of large distinct sub-trades or regions, and establishes rates distinctly by sub-trade or region. For example, the Commission believes that it may be

appropriate to require large rate discussion agreements, such as TSA and WTSA, to report commodity data for this section on a sub-trade or regional basis. In addition, sub-trade commodity data may be necessary where unique anticompetitive concerns are present, or where competitive issues affect pricing for certain commodities. Therefore, section 535.703(d) of the proposed rule provides that the Commission may, in its discretion, require sub-trade commodity data from agreements subject to this section of the Monitoring Reports.⁵⁰

c. Section III

Section III would require that parties to all subject agreements identify a contact person for the Monitoring Report, and that the Monitoring Report be certified and signed by a representative of the parties.

D. Implementation of the Proposed Information Form and Monitoring Report Regulations

In order to assure a smooth transition from the Commission's existing system for collecting information and data in connection with filed agreements to the system proposed in this proceeding, the Commission proposes to implement the Information Form and Monitoring regulations as follows. The new regulations would become effective 30 days after publication of a final rule in the **Federal Register**. All new agreements filed after that time would be required to comply with the new Information Form provisions. The new Monitoring Report provisions would become effective 90 days after publication, and would apply to all agreements then in effect under the Shipping Act. Commenters are encouraged to provide input on this proposed timetable.

IV. Minutes, 46 CFR Part 535, Subpart G

A. Introduction

The Commission requires that certain agreements authorized to operate pursuant to section 4 of the Shipping Act, 46 U.S.C. app. 1703, file confidentially with the Commission a report of designated meetings describing all matters within the scope of the agreement which are discussed or addressed at any such meeting, and indicate any action taken. 46 CFR 535.706. The current minutes filing regulations, which largely reflect the original rules adopted nearly twenty

⁴⁸ At present, the Commission estimates that there are 30 agreements in effect with capacity rationalization authority.

⁴⁹ At present, the Commission estimates that there are 33 such agreements in effect.

⁵⁰ The Commission's authority on this matter would be delegated to the Director of BTA in subpart C of part 501.