

to the minutes filing requirement to list in their minutes "all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission, * * * which are distributed to the member lines and are used to reach a "final decision" on a variety of matters. The extent of compliance with this requirement is difficult to assess accurately since such documents may not be mentioned in minutes if they are not viewed as related to a "final decision." Such documents may not be used to reach a final decision, but may be used to guide members' independent activities. The general paucity of such listings in current minutes, as well as material developed from Commission information demand orders and through discussions with agreement secretariats and filing counsel suggest that compliance with this requirement is far from complete. Further, in instances where a document is identified in the minutes, Commission staff must then determine its importance and attempt to obtain a copy of the document. We believe it is more likely that many documents, collectively prepared or used by agreement members, remain unknown to the Commission.

The Commission believes that effective monitoring of agreement activity requires efficient and timely access to such documents. To address this issue, we are proposing to eliminate the reference to "final decision" and add to the redesignated 46 CFR 535.704(c) a subparagraph that agreements must file with their minutes "any report, circular, notice, statistical compilation, analytical study, survey, or other work distributed, discussed, or exchanged at the meeting, whether presented by oral, written, electronic, or other means." However, the parties would not be required to submit publicly available materials, provided they are identified in the minutes and are readily accessible.

This proposal is intended to provide the Commission with the relevant information necessary to fulfill its statutory obligation of monitoring carriers' collective activities to ensure they do not result in an unreasonable increase in transportation cost or an unreasonable reduction in transportation service. The Commission considered, as an alternative, requiring agreements to submit a summary of all documents discussed at minuted meetings in lieu of the actual documents. However, we rejected this proposal, believing that requiring agreements to create a summary, simply for filing purposes, would be more burdensome than requiring submission

of the documents themselves. In addition, this approach would be less burdensome on the Commission's staff as it would reduce the utilization of scarce resources in tracking down documents, and instead allow us to focus on review and analysis of concerted activities.

4. Serial Numbers

Current section 535.706(d)(1) requires each set of minutes filed with the Commission to be assigned a serial number, and provides an illustrative example suggesting that minutes of meetings be sequentially numbered from the date the agreement becomes effective. Section 535.706(d)(2) provides that any conference or rate agreement which has a system for assigning sequential numbers to its minutes which differs from the example may continue to use its own system.

We now propose, at the redesignated 46 CFR 535.704(e), to require that each set of minutes filed with the Commission shall include the agreement name and number, and a unique identification number indicating the sequence in which the meeting took place during the calendar year. For example, the first meeting of 2003 for agreement "A" would be listed as: "A (Agreement Number), 1/2003." The second meeting would be listed as "A (Agreement Number), 2/2003" and so on, irrespective of whether the meeting is of a specific committee or subcommittee. Numbering would start over in the following calendar year, *i.e.*, the first meeting of the 2004 calendar year would be "A (Agreement Number), 1/2004."

The current rule suggests that serial numbers be applied sequentially. Almost all agreements currently assign serial numbers in this manner to meetings held during a calendar year and start a new numbering sequence for each consecutive year. In addition, about one-third of those assign serial numbers based on the type of meeting or sub-committee, while a few agreements only refer to the date of the meeting and do not assign a unique serial number at all.

Agreements filed with the Commission today typically have a complex organizational structure. Policy level meetings and committees are used to establish pricing policy and to discuss and address broad trade and competitive issues, while working committees or sub-committees (usually consisting of less than the full membership) conduct research; collect, compile and analyze data and information; and make recommendations to the higher level

policy committees on significant matters. Ad hoc committees also are established as necessary, and teleconferences are frequently used as a means to conduct collective carrier business.

Therefore, in order to establish and facilitate an efficient system for filing agreement minutes, as well as to manage the information for compliance and research purposes, the Commission proposes a regulation requiring a standard format for assigning serial numbers to agreement minutes. This proposal requires that agreement minutes' serial numbers be unique, sequentially assigned numbers reflecting the year in which the meeting takes place, adopting the format currently used by a number of carrier agreements.

5. Filing Deadlines

Section 535.701(f) currently requires, among other things, that minutes of agreement meetings be filed within 30 days of the meeting, and that any documents requested by the Commission be filed within 30 days from the receipt of a request. The 30-day requirement was established prior to the widespread adoption and use of new forms of electronic communications. Today, most agreements have electronic mail systems administered through a secretariat and use such systems to electronically record, review and disseminate information, including minutes of their meetings. Based on draft minutes of agreement meetings obtained in Commission investigations and responses to other Commission information demand orders, it appears that minutes for some agreement meetings are prepared within one or two days of the meeting (and sometimes the same day), and are provided promptly to the participants for review (mainly via email). These agreements then typically allow up to two weeks for the participants to respond with any revisions. Based on our comparison of the samples of draft minutes with the final versions, it appears that revisions are rare. Moreover, Commission records show that some agreements do file minutes of their meetings prior to the current 30-day deadline, and in fact, agreements have expedited their filings in response to informal staff requests for minutes of particular interest.

The Commission therefore proposes that the time period for filing minutes of meetings, set forth at section 535.701(f), be reduced from 30 to 15 calendar days from the date of the meeting. Relevant documents referenced in filed minutes would be submitted with the minutes.