

but not including wood pulp, wood chips, pulpwood or paper) does not exceed 40 percent of the capacity of carrier-owned and -leased cars by applicable car type.

(7) *Rates and charges.* (i) The specific base rates and/or charges that would apply without the contract.

(ii) A summary of any escalation provisions in the contract.

(8) *Volume.* All volume, car and/or train size requirements, as set forth in the contract, including:

(i) Movement type (single-car, multiple-car, unit-train).

(ii) Minimum and actual volume requirements under the contract, by applicable period(s) (annual, quarterly, etc.).

(iii) Volume breakpoints affecting the contract.

(9) *Special features.* The existence (but not the terms or amount) of any special features, such as transit-time commitments, credit terms, discounts, switching, special demurrage, guaranteed or minimum percentages, etc.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

- (1) Total bad-car orders;
- (2) Assigned car obligations; and
- (3) Free-running cars.

**§ 1313.7 Contract summary for grain products—involving a port.**

(a) *Summary information.* The summary of a contract for the transportation of grain products that involves service to or from a port must contain the following information:

(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract, and their addresses for service of complaints.

(2) *Specific commodity.* The specific commodities to be transported under the contract. Broad commodity de-

scriptions such as "grain products" are permitted only to the extent that is the commodity description in the contract.

(3) *Contract duration.* (i) The date on which the contract has or will become applicable to the transportation services covered by the contract.

(ii) The termination date of the contract, and any terms for automatic extension or renewal of the contract.

(4) *Rates and charges.* (i) The specific base rates and/or charges that would apply without the contract.

(ii) The existence (but not the terms or amount) of any escalation provisions.

(5) *Volumes.* The existence (but not the terms or amount) of any provisions regarding movement type (e.g. single-car, multiple-car, unit-train) or minimum volume requirements.

(6) *Special features.* The existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

(7) *Rail car data.* Either the information in paragraph (a)(7)(i) of this section or the certified statement in paragraph (a)(7)(ii) of this section as follows:

(i) The number of dedicated cars (or, at the carrier's option, car days), by major car type, to be used to fulfill the contract or contract options, including those that are:

(A) Available and owned by the carrier(s) listed in paragraph (a)(1) of this section;

(B) Available and leased by those carrier(s), with average number of bad-order cars identified; and

(C) (Optional) On order (for ownership or lease), along with delivery dates.

(ii) A certified statement that:

(A) The shipper will furnish the rail cars used for the transportation provided under the contract, and that those rail cars will not be leased from the carrier; or

(B) The contract is restricted to services which do not entail car supply.

(8) *Ports.* (i) The port(s) involved.

(ii) Either the mileages (rounded to the nearest 50 miles) between the port and each inland origin or destination,

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or the specific inland origin and destination points.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

- (1) Total bad-car orders;
- (2) Assigned car obligations; and
- (3) Free-running cars.

### § 1313.8 Contract summary for grain products—not involving a port.

(a) *Summary information.* The summary of a contract for the transportation of grain products that does not involve service to or from a port must contain the information specified in § 1313.7, paragraphs (a)(1), (2), (3) and (7). It must also contain the information specified in § 1313.7(a)(6) if the contract contains such terms.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data specified in § 1313.7(b).

### § 1313.9 Grounds for complaints and contract review.

(a) A complaint may be filed against a contract covered by this part:

(1) By any shipper on the ground that such shipper individually will be harmed because the contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under 49 U.S.C. 11101;

(2) By a port on the ground that such port individually will be harmed because the contract will result in unreasonable discrimination against such port; and

(3) By a shipper of agricultural commodities on the ground that such ship-

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per individually will be harmed because:

(i) The rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that such shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) The contract constitutes a destructive competitive practice.

(b) *Unreasonable discrimination,* for purposes of paragraph (a)(3)(i) of this section, has the same meaning as the term has under 49 U.S.C. 10741.

### § 1313.10 Procedures for complaints and discovery.

(a) *Complaints, discovery petitions, replies, and appeals—(1) Initial filing.* Complaints must be filed by the 18th day after the contract summary is filed. Any discovery petition must accompany the complaint.

(2) *Complaint.* A complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant(s). The complainant must set out the statutory provisions under which it has standing to file a complaint, and its reasons for requesting that the Board find the challenged contract unlawful.

(3) *Discovery petition.* A discovery petition must note on the front page "Petition for Discovery of Rail Contract" and note the contract (and any applicable amendment) number. It should provide the following information:

(i) *Standing—grounds.* The ground upon which the petitioner's complaint is based under § 1313.9.

(ii) *Standing—affected party.* Pertinent information regarding the petitioner's actual or potential participation in the relevant market, including:

(A) The nature and volume of petitioner's relevant business.

(B) The relevant commodities that petitioner ships or receives.

(C) Comparisons of the petitioner's commodities, locations of shipping facilities and serving carriers, actual or potential traffic patterns and serving