

Federal Maritime Commission

§ 535.801

rate policy, general rate changes, the opening or closing of rates, service contracts, or time/volume rates.

(e) *Serial numbers.* Each set of minutes filed with the Commission shall include the agreement name and FMC number and a unique identification number indicating the sequence in which the meeting took place during the calendar year.

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20303, Apr. 19, 2005]

§ 535.705 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001, and shall state and provide the following:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief; and

(4) Why granting the requested waiver will not substantially impair effective monitoring of the agreement.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

Subpart H—Mandatory and Prohibited Provisions

§ 535.801 Independent action.

(a) Each conference agreement shall specify the independent action (“IA”) procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days’ notice to

the conference and shall otherwise be in conformance with section 5(b)(8) of the Act (46 U.S.C. 40303(b)(8)).

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days’ notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) As it pertains to this part, “adopt” means the assumption in identical form of an originating member’s independent action rate or service item, or a particular portion of such a rate or service item. If a carrier adopts