

§ 535.501

(ii) Changes in vessel size, number of vessels, or vessel substitution or replacement, if the resulting change is within a capacity range specified in the agreement; and

(6) Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009]

Subpart E—Information Form Requirements

§ 535.501 General requirements.

(a) Agreements and modifications to agreements identified in § 535.502 shall be accompanied by an Information Form containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to an agreement subject to this subpart shall complete and submit an original and five copies of the Information Form at the time the agreement is filed. A copy of the Form in *Microsoft Word* and *Excel* format may be downloaded from the Commission's home page at <http://www.fmc.gov>, or a paper copy of the Form may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Information Form in the Commission's prescribed electronic format, either on diskette or CD-ROM.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. If a party to the agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for non-compliance and the efforts made to obtain the required information.

(d) Agreement parties may supplement the Information Form with any additional information or material to assist the Commission's review of an agreement.

(e) The Information Form and any additional information submitted in conjunction with the filing of an agreement shall not be disclosed by the Commission except as provided in § 535.608.

46 CFR Ch. IV (10–1–13 Edition)

§ 535.502 Agreements subject to the Information Form requirements.

Agreements and modifications to agreements between or among ocean common carriers subject to this subpart are:

(a) All agreements identified in § 535.201(a), except for low market share agreements identified in § 535.311;

(b) Modifications to an agreement that add any of the following authorities:

(1) 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;

(2) The discussion of, or agreement on, capacity rationalization;

(3) The establishment of a joint service;

(4) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(5) The discussion of, or agreement on, any service contract matter; and

(c) Modifications that expand the geographic scope of an agreement containing any authority identified in § 535.502(b).

§ 535.503 Information Form.

(a) The Information Form, with instructions, for agreements and modifications to agreements subject to this subpart, are set forth in sections I through V of appendix A of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Information Form shall apply as follows:

(1) Sections I and V shall be completed by parties to all agreements identified in § 535.502;

(2) Section II shall be completed by parties to agreements identified in § 535.502(a) that contain any of the following authorities: the charter or use of vessel space in exchange for compensation or services; or the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a joint service, nor capacity rationalization;

(3) Section III shall be completed by parties to agreements identified in § 535.502 that contain the authority to

Federal Maritime Commission

§ 535.603

discuss or agree on capacity rationalization; and

(4) Section IV shall be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) 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;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

§ 535.504 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the Information Form requirements in this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Information Form 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:

(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;

(4) Why granting the requested waiver will not substantially impair effective review of the agreement; and

(5) A description of the full membership, geographic scope, and authority of the agreement or the agreement modification that is to be filed with the Commission.

(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 F—Action on Agreements

§ 535.601 Preliminary review-rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 535.504.

(b)(1) The Commission shall reject any agreement that fails to comply substantially with the filing and Information Form of the Act and this part. The Commission shall notify the filing party in writing of the reason for rejection of the agreement. The original filing, along with any supplemental information or documents submitted, shall be returned to the filing party.

(2) Should a rejected agreement be refiled, the full 45-day waiting period will apply to the refiled agreement.

§ 535.602 Federal Register notice.

(a) A notice of any filed agreement will be transmitted to the FEDERAL REGISTER within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the FEDERAL REGISTER notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested,