

## § 535.202

(7) Discuss and agree on any matter related to service contracts.

(b) *Marine terminal operator agreements.* This part applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; or

(2) Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

### § 535.202 Non-subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States; and

(e) Any agreement among marine terminal operators that exclusively and solely involves transportation in the interstate commerce of the United States.

## Subpart C—Exemptions

### § 535.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or its own motion, may by order or rule exempt for the future any class of agreement involving ocean common carriers and/or marine terminal operators from any requirement of the Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Applications for exemptions shall conform to the general filing requirements for ex-

## 46 CFR Ch. IV (10–1–08 Edition)

emptions set forth at § 502.67 of this title.

(d) *Retention of agreement by parties.* Any agreement that has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Trade Analysis for inspection during the term of the agreement and for a period of three years after its termination.

### § 535.302 Exemptions for certain modifications of effective agreements.

(a) Non-substantive modifications to effective agreements. A non-substantive modification to an effective agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, is one which:

(1) Reflects changes in the name of any geographic locality stated therein, the name of the agreement or the name of a party to the agreement, the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement;

(2) Corrects typographical and grammatical errors in the text of the agreement or renumbers or reletters articles or sub-articles of agreements and references thereto in the text; or

(3) Reflects changes in the titles of persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) Other Miscellaneous Modifications to effective agreements. A miscellaneous modification to an effective agreement is one that:

(1) Cancels the agreement or a portion thereof;

(2) Deletes an agreement party;

(3) Changes the parties to a conference agreement or a discussion agreement among passenger vessel operating common carriers that is open to all ocean common carriers operating passenger vessels of a class defined in the agreements and that does not contain ratemaking, pooling, joint service, sailing or space chartering authority; or

(4) Changes the officials of the agreement and delegations of authority.

(c) A copy of a modification described in (a) or (b) of this section shall be submitted to the Commission but is otherwise exempt from the waiting period requirement of the Act and this part.

(d) Parties to agreements may seek a determination from the Director of the Bureau of Trade Analysis as to whether a particular modification is a non-substantive or other miscellaneous modification within the meaning of this section.

(e) The filing fee for non-substantive or other miscellaneous modifications is provided in § 535.401(g).

**§ 535.303 Husbanding agreements—exemption.**

(a) A husbanding agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent handles routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does not include an agreement that provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of husbanding agreements is provided in § 535.401(g).

**§ 535.304 Agency agreements—exemption.**

(a) An agency agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent solicits and books cargoes and signs contracts of affreightment and bills of lading on behalf of the ocean common carrier. Such an agreement may or may not also include hus-

banding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement as defined above is exempt from the filing requirements of the Act and of this part, except those:

(1) Where a common carrier is to be the agent for a competing ocean common carrier in the same trade; or

(2) That permit an agent to enter into similar agreements with more than one ocean common carrier in a trade.

(c) The filing fee for optional filing of agency agreements is provided in § 535.401(g).

**§ 535.305 Equipment interchange agreements—exemption.**

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for:

(1) The exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and

(2) The transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of equipment interchange agreements is provided in § 535.401(g).

**§ 535.306 Nonexclusive transshipment agreements—exemption.**

(a) A nonexclusive transshipment agreement is a transshipment agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

**§ 535.307**

**46 CFR Ch. IV (10–1–08 Edition)**

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Inter-carrier indemnification or provision for inter-carrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

(f) The filing fee for optional filing of nonexclusive transshipment agreements is provided in § 535.401(g).

**§ 535.307 Agreements between or among wholly-owned subsidiaries and/or their parent's exemption.**

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the Act between or among an ocean common carrier or marine terminal operator subject to the Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the Act and this part.

(c) Ocean common carriers are exempt from section 10(c) of the Act to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) The filing fee for optional filing of these agreements is provided in § 535.401(g).

**§ 535.308 Marine terminal agreements—exemption.**

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification or appendix) that applies to future, prospective activities between or among the parties and that relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices, and conditions of service re-

lating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 535.308(a), with the exception of marine terminal conference, marine terminal interconference, and marine terminal discussion agreements as defined in § 535.308(b), (c), and (d), are exempt from the waiting period requirements of the Act and this part and will, accordingly, be effective on filing with the Commission.

(f) The filing fee for marine terminal agreements is provided in § 535.401(g).

**§ 535.309 Marine terminal services agreements—exemption.**

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services. The term *marine terminal services agreement* does not include any agreement that conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other arrangement for the use of marine terminal facilities or property.

(b) All marine terminal services agreements as defined in § 535.309(a) are exempt from the filing and waiting period requirements of the Act and this part on condition that:

(1) They do not include rates, charges, rules, and regulations that are determined through a marine terminal conference agreement, as defined in § 535.308(b); and

## § 535.310

(2) No antitrust immunity is conferred under the Act with regard to terminal services provided to an ocean common carrier under a marine terminal services agreement that is not filed with the Commission.

(c) The filing fee for optional filing of terminal services agreements is provided in § 535.401(g).

### § 535.310 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, that conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of the Act and this part.

(c) Parties to marine terminal facilities agreements currently in effect shall provide copies to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for optional filing of terminal facilities agreements is provided in § 535.401(g).

### § 535.311 Low market share agreements—exemption.

(a) Low market share agreement means any agreement among ocean common carriers which contains none of the authorities listed in § 535.502(b) and for which the combined market share, based on cargo volume, of the parties in any of the agreement's sub-trades is either:

(1) Less than 30 percent, if all parties are members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b); or

(2) Less than 35 percent, if at least one party is not a member of another

## 46 CFR Ch. IV (10–1–08 Edition)

agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b).

(b) Low market share agreements are exempt from the waiting period requirement of the Act and this part, and are effective on filing.

(c) Parties to agreements may seek a determination from the Director, Bureau of Trade Analysis, as to whether a proposed agreement meets the general definition of a low market share agreement.

(d) The filing fee for low market share agreements is provided in § 535.401(g).

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

### § 535.312 Vessel charter party-exemption.

(a) For purposes of this section, vessel charter party shall mean a contractual agreement between two ocean common carriers for the charter of the full reach of a vessel, which agreement sets forth the entire terms and conditions (including duration, charter hire, and geographical or operational limitations, if any) under which the vessel will be employed.

(b) Vessel charter parties, as defined in paragraph (a) of this section, are exempt from the filing requirements of the Act and this part.

(c) The filing fee for optional filing of vessel charter parties is provided in § 535.401(g).

## Subpart D—Filing of Agreements

### § 535.401 General requirements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, DC 20573. Such filing shall consist of:

(1) A true copy and seven additional copies of the executed agreement;

(2) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and