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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 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.

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(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 (46 U.S.C. 40304, 40306, 41307(b)–(d)), 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

(3) A letter of transmittal as described in paragraph (b) of this section.

(b) The letter of transmittal shall:

(1) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed;

(2) Provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(3) Clearly provide the typewritten or otherwise imprinted name, position, business address, and telephone number of the filing party; and

(4) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(c) To facilitate the timely and accurate publication of the FEDERAL REGISTER Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(d) Any agreement that does not meet the filing requirements of this

section, including any applicable Information Form requirements, shall be rejected in accordance with § 535.601(b).

(e) Assessment agreements shall be filed and shall be effective upon filing.

(f) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the 45-day waiting period required under the Act.

(g) *Fees.* The filing fee is \$1,780 for new agreements requiring Commission review and action; \$851 for agreement modifications requiring Commission review and action; \$397 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); \$138 for carrier exempt agreements; and \$75 for terminal exempt agreements.

(h) The fee for the Commission's agreement database report is \$6.

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 10330, Mar. 3, 2005; 74 FR 50728, Oct. 1, 2009; 75 FR 29455, May 26, 2010]

§ 535.402 Complete and definite agreements.

An agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members, unless those details are matters specifically enumerated as exempt from the filing requirements of this part.

§ 535.403 Form of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreements shall be clearly and legibly written. Agreements in a language other than English shall be accompanied by an English translation.

(b) Every agreement shall include a Title Page indicating:

- (1) The full name of the agreement;
- (2) Once assigned, the Commission-assigned agreement number;

(3) If applicable, the expiration date of the agreement; and

(4) The original effective date of the agreement whenever the Title Page is revised.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement title page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page. For agreement modifications, the appropriate amendment number for each modification should also appear on the page along with the basic agreement number.

(d) Each agreement and/or modification filed will be signed in the original by an official or authorized representative of each of the parties and shall indicate the typewritten full name of the signing party and his or her position, including organizational affiliation. Faxed or photocopied signatures will be accepted if replaced with an original signature as soon as practicable before the effective date.

(e) Every agreement shall include a Table of Contents indicating the location of all agreement provisions.

§ 535.404 Agreement provisions.

Generally, each agreement should:

(a) Indicate the full legal name of each party, including any FMC-assigned agreement number associated with that name, and the address of its principal office (not the address of any agent or representative not an employee of the participating party);

(b) State the ports or port ranges to which the agreement applies as well as any inland points or areas to which it also applies; and

(c) Specify, by organizational title, the administrative and executive officials determined by the agreement parties to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, the agreement should specify:

- (1) The official(s) with authority to file the agreement and any modification thereto and to submit associated supporting materials; and

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(2) A statement as to any designated U.S. representative of the agreement required by this chapter.

§ 535.405 Organization of conference agreements.

Each conference agreement shall:

(a) State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. The agreement must include a description of any such neutral body authority and procedures related thereto.

(b) State affirmatively that the conference parties shall not engage in conduct prohibited by sections 10(c)(1) or 10(c)(3) of the Act (46 U.S.C. 41105(1) or 41105(3)).

(c) Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(d) Include provisions for independent action in accordance with § 535.801 of this part.

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

§ 535.406 Modification of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreement modifications shall be filed in accordance with the provisions of §§ 535.401, 535.402, and 535.403.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published ("revised page"). The revised page shall indicate the consecutive denomination of the revision (*e.g.*, "1st Revised Page 7"). Additional material may be published on a new original page. New original pages inserted between existing effective pages shall be numbered with an alpha suffix (*e.g.*, a page inserted between page 7 and page 8 shall be numbered 7a).

(c) Each revised page shall be accompanied by a duplicate page, submitted for illustrative purposes only, indicating the language being modified in the following manner:

(1) Language being deleted or superseded shall be struck through; and,

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(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(d) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page that shall indicate the new location of the provisions.

§ 535.407 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the requirements of §§ 535.401, 535.403, 535.404, 535.405, and 535.406.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state:

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

(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective review of the agreement.

§ 535.408 Activities that may be conducted without further filings.

(a) Agreements that arise from authority of an effective agreement but whose terms are not fully set forth in the effective agreement to the extent required by § 535.402 are permitted without further filing only if they:

(1) Are themselves exempt from the filing requirements of this part (pursuant to subpart C—Exemptions of this part); or

(2) Are listed in paragraph (b) of this section.

(b) Unless otherwise exempt in subpart C of this part, only the following technical or operational matters of an agreement's affairs established pursuant to express enabling authority in an agreement are considered part of the effective agreement and do not require further filing under section 5 of the Act (46 U.S.C. 40301(d)–(e), 40302–40303, 40305):

(1) Establishment of tariff rates, rules and regulations and their joint publication;

(2) The terms and conditions of space allocation and slot sales, the procedures for allocating space, the establishment of space charter rates, and

the terms and conditions of charter parties;

(3) Stevedoring, terminal, and related services including the operation of tonnage centers or other joint container marshaling facilities;

(4) The following administrative matters:

(i) Scheduling of agreement meetings;

(ii) Collection, collation and circulation of data and reports from or to members;

(iii) Procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals;

(iv) Procedures for anticipating parties' space requirements;

(v) Maintenance of books and records; and

(vi) Details as to the following matters as between parties to the agreement: insurance, procedures for resolutions of disputes relating to loss and/or damage of cargo, and force majeure clauses;

(5) The following operational matters:

(i) Port rotations and schedule adjustments; and

(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.

§ 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