

§ 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 (46 U.S.C. 40301(a)-(c)) 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 (46 U.S.C. 41105) 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).

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

§ 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 arrange-

ment 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. *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; and

(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).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 65036, Dec. 9, 2009]

§ 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