

## Federal Maritime Commission

## § 535.609

were not fully answered or documents supplied. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act (46 U.S.C. 41307(c) and 41307(d)), request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the oral request.

(d) The Commission will publish a notice in the FEDERAL REGISTER that it has requested additional information and serve that notice on any commenting parties. The notice will indicate only that a request was made and will not specify what information is being sought. Interested parties will have fifteen (15) days after publication of the notice to file further comments on the agreement.

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

### § 535.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act (46 U.S.C. 41307(c)), request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request for addi-

tional information. The Commission may request that the court:

(1) Order compliance with the request;

(2) Extend the review period until there has been substantial compliance; or

(3) Grant other equitable relief that under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act (46 U.S.C. 41307(c)(2)) provides that the court shall extend the review period until there has been substantial compliance.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

### § 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act (46 U.S.C. 40301(d)-(e), 40302-40303, 40305), all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information that is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

### § 535.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement.

Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in these negotiations.

### Subpart G—Reporting Requirements

#### §535.701 General requirements.

(a) Parties to agreements identified in §535.702(a) shall submit quarterly Monitoring Reports on an ongoing basis for as long as the agreement remains in effect, containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to agreements identified in §535.704 are required to submit minutes of their meetings for as long as their agreements remain in effect.

(c) If a joint service is a party to an agreement that is subject to the requirements of this subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) Monitoring Reports and minutes required to be filed by this subpart should be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001. A copy of the Monitoring Report 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 may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Monitoring Reports in the Commission's prescribed electronic format, either on diskette or CD-ROM.

(e)(1) The regulations in this paragraph (e) are stayed until further notice.

(2) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained

from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

(f) *Time for filing.* Except as otherwise instructed, Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. Minutes of meetings shall be filed within 21 days after the meeting. Other documents shall be filed within 15 days of the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the Monitoring Report shall be supplied to each item. If a party to an 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.

(h) A Monitoring Report for a particular agreement may be supplemented with any other relevant information or documentary material.

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted by a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes