

Federal Maritime Commission

§ 535.406

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 must be signed by an official or authorized representative of each of the parties and must indicate the type-written full name of the signing party and his or her position, including organizational affiliation. Faxed, photocopied, or scanned signatures will be accepted.

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

[69 FR 64414, Nov. 4, 2004, as amended at 81 FR 24706, Apr. 27, 2016]

§ 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

(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

§ 535.407

46 CFR Ch. IV (10–1–23 Edition)

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,

(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