

§ 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-

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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: