EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/Permit No.	State effective date	EPA Approval date	Explanation
*	*	*	*	*
(31) Exide Technologies Canon Hollow, MO.	Consent Judgment 14H0–CC00064.	10/10/14	2/29/16 and [*Insert* ***Federal Register*** *citation*].	

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
*	*	*	*	*
(70) Exide Technologies Compliance Plan 2008 lead NAAQS.	Forest City	10/15/14	2/29/16 and [*Insert* ***Federal Register*** *citation*].	[EPA–R07–OAR–2015–0835; FRL 9942–77–Region 7.

[FR Doc. 2016–04083 Filed 2–26–16; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR PARTS 501 and 535

[Docket No. 16–04]

RIN 3072–AC54

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission is seeking public comments on possible modifications to its rules governing agreements by or among ocean common carriers and/or marine terminal operators subject to the Shipping Act of 1984, and possible modifications to its rules on the delegation of authority and redelegation of authority by the Director, Bureau of Trade Analysis.

DATES: Submit comments on or before: April 4, 2016.

ADDRESSES: You may submit comments by the following methods:

- *Email: secretary@fmc.gov.* Include in the subject line: ''Docket 16–04, [Commentor/Company name].'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.
- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *http://www.fmc.gov/16-04.*

Confidential Information: The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Karen V. Gregory, Secretary. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.* For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis. *Phone:* (202) 523–5796. *Email: tradeanalysis@fmc.gov.* For legal questions, contact Tyler J. Wood, General Counsel. *Phone:* (202) 523–5740. *Email: generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (FMC or Commission) has issued this advance notice to obtain public comments on proposed modifications to its regulations in 46 CFR part 535, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* and 46 CFR 501.27, *Delegation to and redelegation by the Director, Bureau of Trade Analysis.* The Commission has reviewed these regulations in conformity with the objectives of Executive Order 13579 (E.O. 13579 or Order), *Regulation and Independent Regulatory Agencies,* issued on July 11, 2011. Specifically, E.O. 13579 stated that independent regulatory agencies should strive to promote a regulatory system that protects public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness, and job creation. In this regard, the Order encouraged agencies to develop and release to the public a plan for the periodic review of their existing regulations to determine whether they could be modified, streamlined, expanded, or repealed so as to make their regulatory programs

more effective or less burdensome in achieving their regulatory objectives.

In response, the Commission developed and published its *Plan for the Retrospective Review of Existing Rules* (*Retrospective Review*) and affirmed its intention to review all of its existing regulations and programs.[1] As part of its plan, the Commission requested that the public submit comments and information on how to improve its existing regulations and programs.

Summary of Comments on Part 535

On May 18, 2012, comments [2] specific to part 535 were submitted by ocean carrier members of the major discussion agreements that are currently in effect under the Shipping Act.[3] In their comments, the carriers raised three major issues regarding part 535.

First, on the waiting period exemption for low market share agreements in § 535.311, the carriers requested that the calculation to derive the market share of an agreement be modified from a sub-trade [4] to an agreement-wide basis. In the alternative, the carriers requested that an agreement be allowed to qualify for the exemption using only those agreement sub-trades that account for over 20 percent of the total volume of cargo moved by the parties in the entire geographic scope of the agreement during the most recent calendar quarter.

Carriers argued that under the present regulations, agreements that should qualify for the exemption are subject to the waiting period due to one or two minor sub-trades, which in many cases are solely transshipment ports to and from other services, such as ports in Malta or nations in the Mediterranean or Caribbean islands.

Second, the carriers requested that agreement modifications to reflect changes in the number or size of vessels within the range specified in an agreement should be exempt from the waiting period as non-substantive modifications under the regulation in § 535.302. Carriers argued that even though parties may adjust vessels without filing an amendment to their agreements, if they choose to amend their agreement to reflect the actual changes, the amendment is subject to the 45-day waiting and review period of the Act. 46 U.S.C. 40304(c).

Finally, the carriers requested that the Commission adopt rules and procedures to permit the electronic filing of carrier and marine terminal operator agreements, which they claimed would reduce the burden and expense of filing on the industry.

Review of Regulations by Commission

The Commission has conducted a comprehensive review of its regulations in parts 501 and 535, including review of the modifications requested in the comments submitted by the ocean carriers. Based on its review, the Commission is considering certain modifications to these regulations and seeks comments from interested parties through this advance notice on the suitability and probable impact of these proposed changes to the regulations. Following receipt and consideration of comments to this advance notice, the Commission intends to issue a Notice of Proposed Rulemaking and invite additional public comments on its proposals.

The proposed modifications under consideration include possible changes to the following regulations: (I) The definition of capacity rationalization in § 535.104(e), a new waiting period exemption for space charter agreements in § 535.308, and the waiting period exemption for low market share agreements in § 535.311; (II) the agreement filing exemption of marine terminal services agreements in § 535.309; (III) the standards governing complete and definite agreements in § 535.402 and agreement activities that may be conducted without further filing in § 535.408; (IV) the Information Form requirements in subpart E of part 535; (V) the filing of comments on agreements in § 535.603 and the request for additional information on agreements in § 535.606; (VI) the agreement reporting requirements in subpart G of part 535; (VII) the modifications requested by the ocean carriers in their comments; and (VIII) non-substantive modifications to update and clarify the regulations in parts 501 and 535.

I. The Definition of Capacity Rationalization in § 535.104(e), a New Exemption for Space Charter Agreements in § 535.308, and the Exemption for Low Market Share Agreements in § 535.311

The Shipping Act of 1984 (Shipping Act or Act) grants immunity from the U.S. antitrust laws to permit agreements by or among ocean common carriers and/or marine terminal operators. 46 U.S.C. 40307. To receive this immunity, the Act requires that parties file a true copy of their agreement with the Commission. 46 U.S.C. 40302. Unless specifically exempted, agreements and their modifications are subject to an initial review period of 45 days before they may become effective. 46 U.S.C. 40304(c). The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable statutes and empowers the Commission to obtain information to conduct that review. 46 U.S.C. 40302(c), 40304. Further, the Act empowers the Commission to seek a legal injunction of an agreement, whether at the initial review stage or thereafter, if it determines that the agreement through a reduction in competition would likely result in unreasonable transportation cost increases and/or service decreases. 46 U.S.C. 41307(b). Where feasible, the Act provides leeway for the Commission to exempt by order or rule any class of agreements or activities of parties to agreements if it finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce. 46 U.S.C. 40103.

The exemption from the 45-day waiting period for low market share agreements in § 535.311 applies to agreements that do not contain certain types of authority, such as rate or capacity rationalization authority,[5] and with market shares in any sub-trade of less than 30 percent (if all of the parties are members of an agreement in the same trade or sub-trade with one of the listed authorities (*e.g.,* rate or capacity rationalization)) or 35 percent (if at least one party is not a member of such an agreement in the same trade or sub-trade). The low market share exemption and the related definition of capacity

[1] See *Plan for Retrospective Review of Existing Rules* (November 4, 2011) and *Update to Plan for Retrospective Review of Existing Rules* (February 13, 2013) from the Web site of the FMC at *http://www.fmc.gov/* under About the FMC/Reports, Strategies & Budgets.

[2] See *Comments of Ocean Common Carriers to Retrospective Review of Existing Rules,* dated May 18, 2012, on the Web site of the FMC at *http://www.fmc.gov/* under background documents to FMC Docket No. 16–04.

[3] These agreements are the *Transpacific Stabilization Agreement, Westbound Transpacific Stabilization Agreement, Central America Discussion Agreement, West Coast South America Discussion Agreement, Venezuela Discussion Agreement, ABC Discussion Agreement, United States Australasia Discussion Agreement,* and *Australia New Zealand United States Discussion Agreement.*

[4] In § 535.104(hh), sub-trade is defined to mean the scope of ocean liner cargo carried between each U.S. port range and each foreign country within the scope of the agreement. The U.S. port ranges are the U.S. ports spanning the Atlantic and Gulf coasts as a single range and the U.S. ports spanning the Pacific coast as a single range.

[5] These authorities are listed under § 535.502(b) as: (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.

rationalization in § 535.104(e) were first introduced in the Commission's preceding rulemaking of part 535 in FMC Docket No. 03–15, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984, Final Rule.* 69 FR 64398 (Nov. 4, 2004).

These regulatory changes originated from the Commission's Notice of Inquiry (NOI) in FMC Docket No. 99–13, *The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.*[6] In its NOI, the Commission requested comments on whether there were types of agreements that could be partially or completely exempted from the Shipping Act requirements.[7]

In response to the NOI, ocean carriers and shipowners' associations identified agreements with little or no competitive effect, such as operational and slot charter agreements, as being eligible for an exemption from the filing requirements of the Act.[8] Carriers further specified that agreements that typically have little or no competitive effect (such as those that do not authorize discussion or agreement on rates, vessel operating costs, shared vessel usage, service contracts or capacity) should be completely exempted from the filing requirements of the Act.[9]

Ultimately, the Commission decided on an exemption from the 45-day waiting period for agreements with limited authority that fell below specified market share thresholds. This form of exemption was based on the principle of providing a ''safety zone'' for collaboration between competitors in activities that would be unlikely to have an anticompetitive impact and require investigation. The Commission's low market share exemption was modeled after the ''safety zone'' principle adopted by the Federal Trade Commission and the U.S. Department of Justice (FTC/DOJ or Agencies) in their *Antitrust Guidelines for Collaboration among Competitors,* April 2000, (Guidelines) and the European Commission (EC) in its regulations for consortia agreements between liner shipping companies.[10]

Under the FTC/DOJ Guidelines, the Agencies will not generally challenge collaborations between competitors whose combined market share is less than 20 percent, except in cases where an agreement: (1) Is *per se* illegal,[11] (2) would be challenged without a detailed market analysis, or (3) would be analyzed under the merger rules. Guidelines at p. 26.

Similarly, the regulations adopted by the EC provided that consortia agreements between carriers that did not involve price-fixing were exempted from the competition laws of the European Union (EU) in cases where the combined market share of the parties was less than 30 percent (if operating within a conference), or 35 percent (if not operating within a conference).[12] Based on these policies of other competition agencies and the responses from commenters, the low market share exemption evolved through the rulemaking process into its present final form in the regulations in § 535.311.[13]

In conjunction with creating the low market share exemption in FMC Docket No. 03–15, the Commission expanded the definition of capacity management [14] to the present definition of capacity rationalization, which is defined in § 535.104(e) as a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service.

Agreements that contain capacity rationalization authority do not qualify for an exemption from the waiting period under the low market share regulations in § 535.311. Further, such agreements are assigned specific Information Form and Monitoring Report requirements. The intent behind expanding the definition was to limit the application of the low market share exemption and to recognize that parties to agreements with authority to discuss and agree on capacity, especially those with exclusivity provisions,[15] can control the supply of vessel capacity in the marketplace and affect ocean transportation services and costs within the meaning of section 6(g) of the Act.

In applying the definition of capacity rationalization, the Commission has in practice limited it to agreements that fix the supply of capacity, such as vessel sharing and alliance arrangements, which also place exclusivity provisions on the ability of the parties to operate outside of the agreement. At the time when the last rulemaking took effect in 2005, many of the more complex vessel sharing and alliance agreements, which required monitoring, contained exclusivity clauses and even rate authority. However, as written, the breadth of the definition could conceivably include almost any form of operational agreement involving capacity.

The ambiguity of the present definition of capacity rationalization has created uncertainty as to which agreements actually meet the definition and, in turn, qualify for the low market share exemption and become effective upon filing. Since the time of the Commission's last rulemaking in 2004, carriers have been forming more complex agreements that bring into question the application of the exemption. In their present form, the application of the low market share exemption and the definition of capacity rationalization have become subject to interpretation, and this lack of clarity could cause the regulations to be applied inconsistently and unfairly. The Commission does not believe that such a dilemma was foreseen when these regulations were adopted in 2004. On the contrary, the exemption was adopted as a filing relief measure for the industry and was intended to be straightforward to apply.

Operational agreements that manage capacity have changed and their use has expanded since the last rulemaking, which further supports the need to update and modify the present regulations. Carriers have expanded their cooperation of services through larger alliance agreements spanning multiple trade lanes, and some of these agreements use service centers to manage the parties' capacity levels more effectively. These new forms of alliance agreements include the *Maersk/MSC*

[6] 64 FR 42057 (Aug. 3, 1999).

[7] *Ibid* at 42058.

[8] Notice of proposed rulemaking, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.* 68 FR 67510, 67513 (Dec. 2, 2003).

[9] *Ibid.*

[10] *Ibid* at 67519–67520.

[11] FTC/DOJ stipulated that the types of agreements that have been held *per se* illegal include agreements among competitors to fix prices or output, rig bids, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce. The courts conclusively presume such agreements, once identified, to be illegal, without inquiring into their claimed business purposes, anticompetitive harms, procompetitive benefits, or overall competitive effects. Guidelines at p. 3.

[12] Subsequently, the EU repealed its block exemption for liner shipping conferences in 2008. However, the EC continues to provide a block exemption for liner shipping consortia agreements with a market share of 30 percent or less, Commission Regulation (EC) No. 906/2009. This exemption was extended until April 25, 2020, Commission Regulation (EU) No. 697/2014.

[13] 69 FR 64398, 64399–64400 (Nov. 4, 2004).

[14] Previously, the definition in § 535.104(e) was limited to capacity management, which was defined as an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels.

[15] Exclusivity provisions place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement. In effect, they are non-compete clauses.

Vessel Sharing Agreement, FMC No. 012293; the *G6 Alliance Agreement,* FMC No. 012194; the *COSCO/KL/YMUK/HANJIN/ELJSA Slot Allocation and Sailing Agreement,* FMC No. 012300; and the *CSCL/UASC/CMA CGM Vessel Sharing and Slot Exchange Agreement,* FMC No. 012299.

Agreements, such as these alliances, authorize the parties to exchange vessel space and agree on capacity to form and operate collective services and vessel sharing agreements (VSAs) in the global liner trades. The Commission believes that agreements with such authority fall within the definition of capacity rationalization, regardless of whether exclusivity provisions are imposed on the parties. As such, agreements of this type should not be exempted under § 535.311. In particular, the Commission does not believe that the low market share exemption should apply to agreements that authorize the parties to fix capacity through shared vessels in collectively operated services, especially in the case of alliances that can involve multiple collective services on a global scale and service centers that manage and maintain set capacity levels among the parties.

Another issue with the low market share exemption regulations concerns the requirement that the market share threshold be applied on a country by country sub-trade basis. As noted in their comments to the *Retrospective Review Plan,* carriers believe that the market share threshold for the exemption should be modified from a sub-trade to an agreement-wide basis or, alternatively, be applied using only those sub-trades that account for over 20 percent of the total cargo volume moved under the geographic scope of the agreement. In FMC Docket No. 03–15, the carriers requested a similar modification to the market share threshold in their comments to the proposed rule.[16] In response, the Commission rejected the request of carriers, stating:

> We decline, however, to adopt the commenters' suggestion to make the exemption based upon the entire agreement trade, and find that basing the market share limit on sub-trades is a better measure for competitive concerns, as the geographic scope of an agreement may be extremely broad.

69 FR 64398, 64400.

The Commission has considered the more recent request from the carriers but tentatively concludes that the sub-trade requirement is a better approach for the same reasons cited in the prior rulemaking. A threshold based on the entire combined geographic scope of the agreement, or even on the top sub-trades, could result in agreements taking effect upon filing without an initial review where the parties hold a competitively significant share of the market in the smaller sub-trades. Further, using an agreement-wide threshold may encourage parties to structure their agreements as broadly as possible to evade the waiting period by setting their scopes at a regional, continental, or worldwide level rather than by the applicable trade lane. The Commission does not believe that the exemption should be expanded in this manner.

The Commission recognizes, however, that the market share analysis by sub-trade may be overly complicated and burdensome and may not be necessary for certain types of simple operational agreements, such as space charter agreements. Further, the Commission believes that the application of low market share regulations should be simplified, as explained below.

From its experience in administering the present regulations and given the changes in agreements that have occurred since the last rulemaking, the Commission is considering proposing modifications to the definition of capacity rationalization and the low market share exemption regulations, and is considering adding a new exemption for certain space charter agreements. In particular, the Commission is considering modifying the definition of capacity rationalization to mean the authority in an agreement by or among ocean common carriers to discuss, or agree on, the amount of vessel capacity supplied by the parties in any service or trade within the geographic scope of the agreement.

In the Commission's opinion, this simplified definition would better reflect the types of authority contained in more recent agreements and would be easier to apply in administering the regulations. The proposed definition would apply to voluntary discussion agreements between carriers where the parties discuss and/or agree on the amount of vessel capacity supplied in a trade. On an operational level, the proposed definition would apply to all forms of vessel sharing agreements between carriers where the parties discuss and/or agree on the number, capacity, and/or allocation of vessels or vessel space to be shared in the operation of a service between the parties to the agreement. Further, to avoid confusion, the proposed definition would apply to all such identified capacity agreements regardless of whether they contain any form of exclusivity clauses. As such, this definition would exclude all vessel sharing agreements (VSAs) from qualifying for a low market share exemption.

The Commission realizes that most forms of operational agreements relating to the liner services of carriers affect capacity to some extent. However, for purposes of administering regulatory oversight, the Commission distinguishes certain operational agreements, such as VSAs and alliances, as having the most direct impact on the supply of capacity. In this regard, the Commission recognizes that these types of carrier agreements can promote economic efficiencies and cost savings in the offering of liner services to shippers, as intended and allowed by the immunity granted under the Shipping Act. However, depending on market conditions, agreements having such a direct impact on capacity, especially in trades where their parties may discuss and agree on rates, can potentially be used to reduce competition and unreasonably affect transportation services and costs within the meaning of section 6(g), which justifies a thorough initial review of their competitive impact under the full 45-day waiting period.

The Commission believes that the proposed modification to the definition of capacity rationalization for a low market share exemption would provide the necessary clarity in the application of the regulations. While we recognize that some VSAs, such as large alliances, raise more competitive concerns than others, the Commission believes that distinguishing between VSAs in applying an exemption would continue to cause the same ambiguity and uncertainty that exists in the present regulations.

The Commission believes that an exemption from the waiting period may be better suited for agreements that have an operational urgency to become effective upon filing, such as certain space charter agreements. In many cases, space charter agreements have a more imminent need to become effective upon filing because they may be formed quickly in response to market volatility and/or operating urgency.

In contrast, carriers that join together to form VSAs have likely conducted long range plans and analyses to weigh the benefits of such cooperative ventures, and such arrangements justify a more thorough initial review by the Commission to assess their potential impact. Moreover, § 535.605 of the regulations provides a procedure whereby parties to any agreement subject to filing under the Act and part

[16] 69 FR 64389, 64399.

535 may request a shortened review period for good cause, such as operational urgency.

Given the transactional nature of the slot charter market, the Commission believes that certain space charter agreements should be exempt from the waiting period and that the exemption should not be subject to a market share threshold. Accordingly, we are considering proposing a new exemption, located at § 535.308, that would apply to agreements among ocean common carriers that contain non-exclusive authority to charter or exchange vessel space between two individual carriers and does not contain any authorities identified in § 535.502(b), such as rate or capacity rationalization authority. By non-exclusive authority, the Commission means authority that contains no provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services.

The Commission believes that such agreements could become effective upon filing without resulting in any serious negative competitive effects under section 6(g) of the Act. The exemption would provide greater clarity in the application of the regulations and reduce the burden of having to justify the exemption with a market share analysis by sub-trade as required under the current low market share exemption. Moreover, the exemption would allow carriers to respond easily and quickly to market forces in the liner shipping trades.

In conjunction with the proposed modifications discussed above, the Commission believes that the present low market share regulations would benefit from simplification. We are considering proposing to eliminate the lower market share threshold of 30 percent in cases where the parties to the agreement are members of another agreement in the same trade or sub-trade containing any of the authorities identified in § 535.502(b) [*i.e.,* forms of rate, pooling, service contract or capacity rationalization authorities]. Under the proposed exemption, the market share threshold would be set at 35 percent or less regardless of whether the parties to the agreement participate in any other agreements in the same trade or sub-trade.

The Commission has tentatively concluded that the application of the tiered 30 and 35 percent threshold [based on the parties' participation in other agreements by sub-trade] is unnecessarily complicated and time consuming for the industry to analyze. The complexity of applying the tiered threshold regulations has resulted in protracted analyses over simple operational agreements. The Commission does not believe that this complication was an intended effect of the exemption. As explained, the exemption was adopted as a relief measure intended to reduce the filing burden on the industry. The Commission believes that the proposed modification would substantially simplify the application of the regulations and reduce the time burden on the industry.

The Commission tentatively concludes that the modified low market share exemption, as proposed, would not have any adverse competitive effects. The proposed modification to the definition of capacity rationalization would make capacity agreements, such as VSAs and alliances, ineligible for the low market share exemption. Only simple operational agreements would be eligible for the exemption, such as space charter and sailing agreements,[17] that would not otherwise be automatically exempted under the proposed space charter exemption in § 535.308.

Limiting the low market share exemption to simple operational agreements that do not authorize agreement on service or trade capacity reduces the competitive concerns about the parties' participation in other agreements in the same trade or sub-trade, and eliminates the need for the lower 30 percent market share threshold. The rationale for the lower 30 percent threshold was based on the concern that parties in operational agreements with overriding rate or capacity rationalization authority in the same trade or sub-trade [through their participation in a conference, rate discussion, or capacity rationalization agreement] were more anticompetitive than operational agreements without such overriding authority. This competitive concern would be mitigated under the proposed regulatory modifications to part 535, and the Commission believes that a threshold of 35 percent or less for the exemption of the waiting period would provide a sufficient ''safety zone'' for simple operational agreements.[18]

[17] As discussed in part VIII of this notice, the Commission is also considering proposing to amend the definition of sailing agreement in § 535.104(bb).

[18] In terms of the impact of the proposed modifications on agreement filings, the Commission estimates that the filing burden to carriers could actually be reduced. Based on new and amended agreement filings for fiscal year 2014, the Commission estimates that 15 filings that were effective on filing under the low market share exemption would be subject to the 45–day waiting period as new VSAs or amendments thereof. Conversely, 20 filings that were subject to the 45–day waiting period would be effective on filing as new two-party space charter agreements or amendments thereof. In fiscal year 2014, there were a total of 186 agreement filings, including new and amended agreements.

II. Marine Terminal Services Agreements in § 535.309

Section 535.309 provides an exemption from the filing and waiting period requirements of the Act for terminal services agreements [19] between marine terminal operators (MTOs) and ocean carriers to the extent that the rates, charges, rules, and regulations of such agreements were not collectively agreed upon under a MTO conference agreement.[20] Parties may optionally file their terminal services agreements with the Commission. 46 CFR 535.301(b). If the parties decide not to file the agreement, however, no antitrust immunity is conferred with regard to terminal services provided under the agreement. 46 CFR 535.309(b)(2). Parties to any agreement exempted from filing by the Commission under Section 16 of the Act, 46 U.S.C. 40103, are required to retain the agreement and make it available upon request by the Bureau during the term of the agreement and for a period of three years after its termination. 46 CFR 535.301(d).

In 1992, under Section 16, the Commission exempted terminal services agreements from its MTO tariff filing regulations and the agreement filing requirements in Section 5 of the Act by final rule in FMC Docket No. 91–20, *Exemption of Certain Marine Terminal Agreements.*[21] At the time, the Commission by regulation [22] required

[19] Section 535.309(a) defines marine terminal services agreement to mean 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, docking, 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.

[20] Section 535.309(b)(1) defines a marine terminal conference agreement as 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.

[21] 57 FR 4578 (Feb. 6, 1992).

[22] By final rule in FMC Docket No. 875, *Filing of Tariffs by Terminal Operators,* 30 FR 12681 (Oct. 5, 1965), the Commission implemented tariff-filing regulations governing MTOs pursuant to its authority in Sections 17 and 21 of the 1916 Act. Section 17 required regulated persons to observe just and reasonable regulations and practices in the receiving, handling, storing, or delivery of property and authorized the Commission to prescribe and

that the rates, charges, and rules assessed by MTOs for terminal services be subject to public tariff filing at the Commission.[23] As an alternative to the tariff rates, an MTO and an ocean carrier could individually negotiate their own rates and terms for terminal service through a terminal services agreement that by statute is required to be filed with the Commission.[24]

The rule establishing the exemption resulted from an extensive review by the Commission of the terminal services market and its jurisdiction and regulation of MTOs that began in 1986.[25] The primary reason for the review and eventual exemption was the practice of MTOs charging ocean carriers a flat throughput rate for combined terminal and stevedoring services in terminal services agreements but not filing these rates with the Commission. Petitions from associations of MTOs and stevedoring companies were filed with the Commission requesting exemptions from such requirements under Section 16 of the Act. Petitioners argued that the MTO filing requirements were unduly burdensome given the difficulty of distinguishing between rates for stevedoring and terminal services. Further, they believed that the negotiated throughput rates were commercially sensitive data that should be kept confidential and not subject to public filing requirements. Upon review, the Commission issued the exemption because it reasoned at the time that exempting such arrangements had the potential to be more pro-competitive than enforcing the tariff and agreement filing requirements.[26]

As part of the current regulatory review, the Commission has reassessed this exemption and believes that there is now a need for certain terminal services agreement information to be filed with the FMC given the increased cooperation of MTOs in conference and discussion agreements. Within the past decade, MTOs at major U.S. ports have become more active in cooperating through agreements to implement new programs addressing security and safety measures, environmental standards, and port operations and congestion. While such programs may be beneficial, agreements between MTOs can also affect competition in the terminal services market and impact transportation services and costs within the meaning of Section 6(g), such as agreements on the levels of free-time, detention, and demurrage charged by MTOs to port users. It is the responsibility of the Commission to analyze and monitor the competitive impact of MTO agreements and take necessary action to seek to prevent or enjoin activities that would likely result in an unreasonable decrease in transportation service or an unreasonable increase in transportation cost.

Some notable MTO agreements that are presently in effect under the Shipping Act include the *West Coast MTO Agreement* (WCMTOA), FMC No. 201143; the *Port of NY/NJ Sustainable Services Agreement,* FMC No. 201175; the *Oakland MTO Agreement* (OAKMTOA), FMC No. 201202; and the *Pacific Ports Operational Improvement Agreement* (PPOIA), FMC No. 201227. A major program implemented by the MTO parties to WCMTOA is PierPASS, which assesses extra fees to shippers to operate container terminals at off-peak hours at the Ports of Los Angeles/Long Beach. The parties to OAKMTOA are proposing to implement a similar program, OAKPASS, at the Port of Oakland.

Terminal services agreements are relevant in analyzing the competitive impact of programs and actions of MTOs in conference and discussion agreements. Terminal services agreements provide firsthand comprehensive data and information on the terminal services market at U.S. ports, including the services and rates MTOs make available to ocean carriers. Such information would enable the Commission to analyze and determine the competitive market structure of MTOs at U.S. ports. Under the exemption, as MTOs have increased their cooperation under agreements, no empirical data on the terminal services market has been readily available to the Commission to analyze the competitive impact of such cooperative programs and activities. The filing of terminal services agreements would provide the Commission with timely market data to analyze and monitor the competitive impact of programs and activities of MTOs in agreements. The Commission could use this information to identify and safeguard against any possible market distortions resulting from the activities of MTOs in agreements. A serious market distortion at U.S. ports due to the actions of MTOs could potentially disrupt the international supply chain of container cargo and affect U.S. commerce in contravention of the Shipping Act.

Most recently, the submission of terminal services agreements became an issue when the Commission sought specific data and information from the parties to PPOIA. PPOIA became effective under the Shipping Act on April 17, 2015. It is an agreement with significant market power because its parties include the major ocean carriers and MTOs operating on the U.S. Pacific Coast. It authorizes the parties to discuss and agree on a broad range of terminal services affecting U.S. Pacific port operations. The Commission's staff requested certain data and information from the PPOIA parties, including current copies of their terminals services agreement, to evaluate the agreement. Even though parties to exempted agreements are required to provide such information under § 535.301(d), the Commission's staff had difficulty obtaining complete information from the PPOIA parties, and the Commission found it necessary to issue an Order under Section 15 of the Act to obtain the required terminal services agreements from the ocean carrier parties to PPOIA.[27]

Given these recent developments and the increased activities of MTOs under agreements, the Commission believes

enforce such regulations. Section 21 authorized the Commission to require periodic or special reports from any person subject to the 1916 Act.

[23] Subsequently, the Ocean Shipping Reform Act of 1998 (OSRA) replaced the mandatory tariff filing requirements with a provision (Section 8(f) of the Act, 46 U.S.C. 40501(f)) allowing MTOs to optionally publish their own schedule of rates, rules and practices. Public Law 105–258, 106(e), 112 Stat. 1902, 1907 (1998).

[24] Sections 4, 5, and 6 of the Act.

[25] Starting in 1986, the Commission took numerous actions to obtain information and evaluate the impact the shipping statutes and regulations had on the terminal services market. In sequential order, these actions included: (1) Notice of Waiver of Penalties, Marine Terminal Service Agreements, 51 FR 23154 (June 25, 1986); (2) Supplemental Notice of Waiver of Penalties, Marine Terminal Service Agreements, 51 FR 36755 (Oct. 15, 1986; (3) Order of Investigation, Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities, 52 FR 18743 (May 19, 1987); (4) Second Supplemental Notice of Waiver of Penalties, Marine Terminal Service Agreements, 52 FR 18744 (May 19, 1987); (5) *Report of Fact Finding Officer, Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities,* 24 S.R.R. 1260 (1988); (6) Order to Discontinue Fact Finding Investigation No. 17, and FMC Docket No. 90–6, Notice of Inquiry, Marine Terminal Operator Regulations, 55 FR 5626 (Feb. 16, 1990); (7) Order to Discontinue FMC Docket No. 90–6, Notice of Inquiry, Marine Terminal Operator Regulations, and FMC Docket No. 91–20, Notice of Proposed Rulemaking, Exemption of Certain Marine Terminal Services Arrangements, 56 FR 22384 (May 15, 1991); and (8) FMC Docket No. 91–20, Final Rule, Exemption of Certain Marine Terminal Arrangements, 57 FR 4578 (Feb. 6, 1992).

[26] 56 FR at 22386.

[27] *Section 15 Order Regarding the Pacific Ports Operational Improvements Agreement and Marine Terminal Services and Chassis-Related issues at the United States Pacific Coast Ports,* Federal Maritime Commission (July 10, 2015) from the Web site of the FMC at *http://www.fmc.gov/* under View All News/ June 24, 2015/Commission Takes Action on Several Regulatory Matters.

that it is appropriate to establish, as a standard Monitoring Report requirement in part 535 of the regulations, a rule to require that all of the MTOs, participating in any conference or discussion agreement on file and in effect at the FMC, submit to the FMC all of their effective terminal services agreements and amendments thereto. Such a Monitoring Report requirement would readily provide the Commission with the necessary market data on a consistent basis to analyze and monitor MTO agreement activities, without requiring the Commission to take additional measures or actions to obtain data, which can result in lag times, gaps and incomplete information.

As a Monitoring Report requirement, the terminal services agreements would be filed and retained at the FMC as confidential information pursuant to the terms in Section 6(j) of the Act, 46 U.S.C. 40306, and the regulations in § 535.701(i). As such, the submission of terminal services agreements would not be subject to the agreement filing requirements of the Act and public disclosure, which were primary issues of contention in the Commission's previous review of the matter when it issued the exemption. However, the Commission would require that terminal services agreements filed as Monitoring Reports reflect the true and complete copy of the agreement in accordance with the regulations in § 535.402, which are applicable to agreements filed under the Act. A complete copy of a terminal services agreement would include the total throughput rate agreed to by the parties.

The Commission specifically invites public comments on its proposed Monitoring Report requirements for parties to MTO conference and discussion agreements, along with estimates of the probable reporting burden of such requirements. The Commission also invites recommendations from commenters on alternative Monitoring Report requirements for such MTO agreement parties that would sufficiently address its concerns as discussed herein.

In § 535.301, the Commission believes that it is necessary to set a definitive deadline for the submission of exempted agreements in response to requests from Commission staff. Specifically, the Commission is considering proposing a procedure by which staff would send a written request for exempted agreements and parties would have 15 days to provide the requested agreements. We request comment on this tentative proposal.

III. Complete and Definite Agreements in § 535.402, and Activities That May Be Conducted Without Further Filings in § 535.408

The Shipping Act requires that a true copy of every agreement be filed with the Commission. 46 U.S.C. 40302(a). In administering these requirements, the Commission has endeavored to provide parties to agreements with guidance and clarity on what constitutes a ''true copy'' of an agreement through its regulations in § 535.402, which require that 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.

Section 535.408 exempts from the filing requirements certain types of agreements arising from the authority of an existing, effective agreement. Specifically, agreements based on the authority of effective agreements are permitted without further filing to the extent that: (1) The effective agreement itself is exempted from filing, pursuant to subpart C of part 535, or (2) it relates to one of several technical or operational matters of the effective agreement's express enabling authority. Such matters include stevedoring, terminal, and related services. 46 CFR 535.408(b)(3).

The current language in §§ 535.402 and 535.408 was promulgated by the Commission in a 2004 final rule to clarify the filing requirements. In its rulemaking, the Commission recognized that agreement parties might be confused about the required level of detail for filed agreements and the extent to which parties could engage in further agreements without filing such further agreements with the FMC.[28]

Despite these previous efforts, the Commission is concerned about continuing confusion among regulated entities regarding the requirement that further agreements arising from the authority of a filed agreement must generally be filed with the Commission. This confusion may stem from the absence of a clear, affirmative requirement in the regulations stating that they must be filed. Section 535.402, the general requirement to file agreements, and § 535.408, which specifies the types of further agreements that are permitted without filing, establish such a requirement, but it may not be clear to agreement parties. To address this issue, the Commission is considering proposing to amend § 535.402 to expressly state that an agreement that arises from the authority of an effective agreement, but whose terms are not fully set forth in the effective agreement to the extent required by the current text of § 535.402, must be filed with the Commission unless exempted under § 535.408.

The Commission is also concerned that the filing exemption for further agreements addressing stevedoring, terminal, and related services is unclear and could be interpreted broadly by regulated entities.

There are many agreements between MTOs and/or ocean carriers, such as WCMTOA and PPOIA, which authorize the parties to discuss and agree on terminal and related services. Some agreement parties may interpret § 502.408(b)(3) as exempting from further filing agreements establishing joint programs related to such services, no matter how large or potentially costly such programs may be. In addition, the open-ended terminology in the regulations creates uncertainty and confusion for parties to agreements over which types of further agreements relating to terminal services need to be filed with the FMC.

As originally envisioned, the Commission intended to limit the exemptions in § 535.408(b) to routine operational and administrative matters that require day-to-day flexibility or activities that the Commission does not need information on to assess the relationship of the agreement parties.[29] To eliminate any ambiguity in the regulations and ensure adequate Commission review of agreements involving MTOs, the Commission is considering eliminating the current exemption and replacing it with a list of more narrowly defined, specific services that are suitable for an exemption in conformity with the limits originally intended by the Commission.

The Commission invites comments on the proposed modifications to § 535.402 and § 535.408 under consideration. In particular, the Commission is interested in comments on what specific services should be included in § 535.408(b) to replace § 535.408(b)(3). The Commission is also interested in how such exempted services should be properly defined to avoid any

[28] *See Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* 69 FR 64398 (Nov. 4, 2004); *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* 68 FR 67510, 67515–19 (proposed Dec. 2, 2003).

[29] *Ibid* at 67518.

confusion.[30] In addition, the Commission requests comments on whether ''the operation of tonnage centers and other joint container marshaling facilities,'' as listed in § 535.408(b)(3), continues to be a relevant and suitable exempted activity relating to terminal services.

IV. The Information Form Requirements in Subpart E of Part 535

There are presently five sections of the Information Form that apply to carrier agreements subject to filing under the Act, which require certain data and information in order to analyze the potential competitive impacts of the agreement. The sections of the Information Form apply depending on the authorities contained in the agreement, which determines the extent of data and information that is required. Simple operational agreements provide the least amount of data, while agreements with rate authority provide the most data.

Section I of the Information Form applies to all carrier agreements, except those exempted from the waiting period under § 535.311, and requires the parties to state the name and purpose of the agreement, identify their participation in all other agreements within the same geographic scope, and identify the authorities contained in the proposed agreement.

The Commission is considering proposing to modify section I to specify that space charter agreements exempted under the new proposed exemption at § 535.308 would not be subject to an Information Form, and to revise or add the proposed modifications to the definitions of agreement authorities in § 535.104 to the list of authorities in Section I.

Section II of the Information Form applies to simple operational agreements, not exempted under § 535.311, and requires the parties to list the number of their port calls for the preceding 12 months for the agreement services and provide a narrative statement on any significant operational changes to be implemented under the proposed agreement.

Section III of the Information Form applies to agreements with capacity rationalization authority and requires the parties to provide data on their vessel capacity and utilization of the agreement services for a calendar quarter, port calls, and a narrative statement on any significant operational changes to be implemented under the proposed agreement.

The Commission is considering proposing to eliminate the Information Form requirements in Section II for simple operational agreements not exempted under § 535.311. The Commission believes that the present requirements for such agreements may be overly burdensome and unnecessary. Instead, the necessary information to evaluate the parties' operations under the agreement could be obtained from the authority and content of the agreement and commercial sources of data.

The Commission is considering proposing that Section III be renumbered as Section II and modified to apply to agreements with authority to charter vessel space [unless exempted under § 535.308 or § 535.311], or with authority to discuss or agree on capacity rationalization. The Commission believes that parties to agreements with such authority should provide before and after data on their service strings, vessel deployments, port itinerary, annual capacity, and vessel space allocation for the services pertaining to the agreement. Such data would provide the Commission with a clearer understanding of any service changes and the competitive impact of those changes. Further, the Commission is considering proposing that parties to such agreements provide vessel capacity and utilization data for the services pertaining to the agreement for each month of the preceding calendar quarter, as well as a narrative statement discussing any significant operational changes[31] to be implemented under the agreement and the impact of those changes.

Section IV of the Information Form applies to agreements with rate authority. These agreements are required to provide data on market share by sub-trade, average revenue, revenue and cargo volume on the top ten major moving commodities, vessel capacity and utilization, port calls, and a narrative statement on any significant operational changes that are anticipated to occur in the services operated by the parties.

The Commission is considering proposing that Section IV be renumbered as Section III and that the requirements for rate agreements be reduced to data on market share by agreement-wide trade instead of sub-trade, average revenue, vessel capacity and utilization, and a narrative statement on any anticipated or planned significant operational changes and their impact. The Commission believes that market share data derived on the total geographic scope of the agreement, rather than by sub-trade, should be sufficient for its analysis and less burdensome on the parties. If the Commission needs more detailed data, it could use its subscriptions to commercial data sources to evaluate market share in greater detail.

The Commission favors eliminating data regarding the revenue and cargo volume of the top ten major moving commodities. It is our view that carriers in rate discussion agreements are focusing more of their pricing efforts on guidelines for trade-wide or regional general rate increases (GRIs) rather than specific commodities. As such, the Commission relies on total average revenue data as a more accurate gauge of pricing trends in the marketplace. Also, the Commission believes that the reporting burden to prepare revenue and cargo data by commodity exceeds the value of such data; however, in cases where specific commodity data is essential for an agreement analysis, the Commission would be able to request the data.

For similar reasons, the Commission is considering proposing to eliminate the requirement for data on the number of port calls. The Commission does not believe that the port call data is essential for such agreements. The impact of any anticipated or planned significant operational changes in the services operated by the parties could be identified and discussed in the narrative statement.

Section V of the Information Form requires contact information and a signed certification of the Form. No changes to the requirements in Section V are under consideration at this time, other than renumbering it as Section IV.

The Commission is considering proposing that the instructions to the Information Form be streamlined by removing many of the same definitions

[30] In this regard, the regulations in § 525.1(c)(19) and § 535.309(a) define terminal services to include checking, docking, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, wharf demurrage, and marine terminal facilities provided for such services. These terminal services are individually defined in § 525.1.

The Commission has traditionally viewed stevedoring as the business of hiring and furnishing longshore labor and related facilities and equipment for the transfer of cargo between a vessel and a point of rest on a marine terminal facility (the point of rest is the place at which inbound cargo is tendered for delivery to the consignee and outbound cargo is received from shippers for loading on a vessel). 56 FR at 22385.

[31] The Commission believes that the definition of significant operational changes should be standardized and applied consistently throughout the regulations to mean an increase or decrease in a party's liner service, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for a fixed, seasonally planned, or indefinite period of time. The amended definition would exclude incidental or temporary alterations or changes that have little or no operational impact.

repeated throughout each section of the Form and stating them in paragraphs at the beginning of the Form with the understanding that they apply to each section. The Commission believes that this proposed modification would improve the clarity and readability of the instructions.

V. Comments in § 535.603, and Requests for Additional Information in § 535.606

Section 535.603(a) provides that persons may file with the Secretary written comments regarding a filed agreement, and if requested, such comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. However, where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

Under § 535.606, during the 45-day waiting and review period of a filed agreement, the Commission may formally issue a request for additional information (RFAI) on the parties to a filed agreement for information necessary to complete the statutory review required by the Act. When the Commission issues an RFAI, the effective date of the filed agreement is suspended, and a new 45-day waiting and review period begins when the Commission receives a response to the RFAI from the agreement parties. As a matter of public notice for comment, the regulations provide that the Commission will give notice in the **Federal Register** that an RFAI of a filed agreement has been issued, but such notice will not specify what additional information is being requested.

Section 6(j) of the Act, 46 U.S.C. 40306, and the regulations in § 535.608 provide for the confidentiality of agreement-related information submitted to the Commission. Specifically, § 535.608 provides that except for an agreement filed under Section 5 of the Act, all of the information submitted to the Commission by parties to a filed agreement will be exempt from disclosure under 5 U.S.C. 552, including the Information Form, voluntary submissions of information, reasons for non-compliance, and responses to RFAIs.

It has been the general policy of the Commission that questions issued by the Commission in an RFAI and comments submitted on a filed agreement by third parties not be released for public disclosure, even though the regulations on confidentiality in § 535.608 only explicitly identify information submitted to the FMC by the parties to a filed agreement. Under this advance notice, the Commission invites comments on its general policy of not releasing RFAI questions and third-party comments for public disclosure and whether this policy should be modified, and if so, what form of modifications to these regulations would be appropriate.

VI. Agreement Reporting Requirements in Subpart G of Part 535

Under subpart G of part 535, parties to agreements that contain certain authority are required to file periodic Monitoring Report and/or other prescribed reports. Further, parties to agreements with rate authority are required to provide minutes of their meetings.

There are currently three sections of the Monitoring Report. Sections I and II apply according to the authorities contained in the agreement. Section III applies to all agreements subject to Monitoring Reports and requires contact information and a signed certification of the Report.

Section I of the Monitoring Report applies to agreements with capacity rationalization authority and requires data on vessel capacity and utilization for the preceding calendar quarter for the liner services pertaining to the agreement. Further, parties to such agreements are required to provide an advance notice of any significant reductions in vessel capacity no later than 15 days after an agreed upon reduction but prior to its implementation. In addition, the parties are required to provide a narrative statement on any other significant operational changes implemented under the agreement during the quarter.

The Commission is considering proposing that Section I be modified to apply to agreements between or among three or more ocean common carriers that contain the authority to discuss or agree on capacity rationalization. Under this proposal, agreements subject to reporting under Section I would include vessel sharing and alliance agreements among three or more carriers regardless of whether such agreements contain exclusivity clauses. This proposed application of the Monitoring Report requirements is consistent with the proposed modification to the definition of capacity rationalization.

The Commission believes that three or more carriers agreeing on the supply of capacity in a trade or service would provide a reasonable threshold to capture and monitor the most meaningful capacity agreements without being overly burdensome. However, there are agreements below this threshold that the Commission may need to monitor. In such cases, the Commission may decide to prescribe reporting requirements to monitor the agreement pursuant to its authority in § 535.702(d).[32]

Alternatively, there may be capacity agreements between three or more carriers where the parties believe it unnecessary to file Monitoring Reports, such as where the parties may only agree on one service string in a highly competitive trade lane. In such cases, the parties may apply and the Commission shall consider an application for waiver of some or all of the Monitoring Report requirements in accordance with § 535.705.

In terms of requirements, the Commission is considering proposing to require that parties to capacity agreements subject to Section I submit quarterly Reports with data on their vessel capacity and utilization separately showing each month of the quarter for the liner services pertaining to the agreement. The proposed requirement to report capacity data on a monthly basis would be a change from the present requirement for quarterly data; however, monthly data would provide the Commission with additional data observations by which to conduct more relevant statistical analyses. The provision for advance notice of significant reductions in capacity would be retained along with the narrative statement on any other significant operational changes implemented during the quarter.

Section II of the Monitoring Report applies to carrier agreements with rate authority with a market share of 35 percent or more. Parties to these agreements are required to submit quarterly reports with data on market share by sub-trade, average revenue, revenue and cargo volume on the top ten major moving commodities, vessel capacity and utilization, and a narrative statement on any significant operational changes that occurred during the quarter in the services operated by the parties to the agreement. The Commission is considering proposing that the

[32] In this regard, the Commission is also considering proposing to clarify the wording of § 535.702(d) to make clear that it applies to any agreement filed, not merely those agreements subject to the monitoring report requirements. Further, the Commission is considering proposing to move this authority from § 535.702(d) under the Monitoring Reports section to § 535.701(c) under the general requirements section for reporting requirements in subpart G of part 535. Sections 535.701(c)–(j) of the current regulations would be redesignated sequentially.

requirements for these agreements be reduced by eliminating the market share, commodity components, and the narrative statement on significant operational changes.

The market share requirement delays the Report because most of the carriers supply this information using commercial data sources, which causes a lag in the Report of 75 days after the end of the quarter. 46 CFR 535.701(f). The Commission subscribes to commercial sources of data and can run periodic data reports as needed. Without the market share requirement, the Commission is considering proposing that the filing deadline for the Report be shortened from 75 to 45 days after the end of each quarter, which would provide more timely data.

Further, the Commission is considering proposing that the reporting requirement for data by commodity be eliminated for the Monitoring Report. Carriers in rate discussion agreements generally set guidelines for GRIs to a greater extent than commodity rates. The Commission tentatively concludes that the burden associated with preparing this data is likely greater than its value. However, when essential to monitoring an agreement, the Commission could prescribe specific commodity data pursuant to its authority.

The Commission is considering proposing that parties to rate agreements no longer be required to report on the significant operational changes in their services. The Commission believes that reporting this information under VSA and alliance agreements should provide a sufficient understanding of significant operational changes in the U.S. trade lanes, especially with the broadened application of the proposed definition of capacity rationalization. When needed, the Commission could always request specific operational information from the parties.

With the elimination of these requirements, the Commission is considering proposing that parties to rate agreements with a market share of 35 percent or more submit quarterly Monitoring Reports with data on their average revenue for the quarter, and their vessel capacity and utilization for each month of the quarter for the liner services operated by the parties within the geographic scope of the agreement.

As with the Information Form, the Commission is considering proposing that the Monitoring Report instructions be streamlined by removing definitions repeated within each section and stating them in paragraphs at the beginning of the Report with the understanding that they apply to each section.

Section 535.704(b) defines the meaning of a meeting between the parties to an agreement for the purpose of the filing of meeting minutes with the Commission. The Commission is considering proposing that the definition be modified to clarify that the discussions of parties using different forms of technology (*e.g.,* telephone, electronic device, electronic mail, file transfer protocol, electronic or video chat, video conference) still constitute discussions for the purpose of filing minutes.

VII. Modifications Requested by the Ocean Carriers in Their Comments

As discussed above, the Commission has tentatively concluded not to propose the carriers' requested modifications to the market share threshold because they might encourage parties to structure the geographic scopes of their agreements as broadly as possible to evade the waiting period requirements. Instead, the Commission believes that the regulations should be simplified as discussed by its proposed modifications to the definition of capacity rationalization, the low market share exemption regulations, and the new exemption for space charter agreements.

On the issue of exempting from the waiting period agreement amendments on changes in the number or size of vessels within the range stated in the agreement, the Commission tentatively agrees with the logic of an exemption and is considering proposing to add such agreement amendments to the list of non-substantive modifications that are effective upon filing in § 535.302(a). The Commission expects that this modification to § 535.302(a) would encourage carriers to amend their agreements accordingly with more accurate information, which would improve the clarity of the agreement.

On the issue of electronic filing, the Commission agrees with the merits of electronic filing and is presently working on the implementation of an electronic filing system for agreement filings that it plans to introduce in a separate rulemaking.

VIII. Non-Substantive Modifications To Update and Clarify the Regulations in Parts 501 and 535

In addition to the aforementioned proposals, the Commission invites comments on the following proposals under consideration to update and clarify the regulations:

1. The Commission is considering proposing that the CFR citation for the delegated authority of the Director of the Bureau of Trade Analysis to prescribe reporting requirements in § 501.27(o) be revised from § 535.702(d) to § 535.701(c) to reflect the aforementioned proposal to move this regulation from the Monitoring Report section in 535.702 to the general requirements section in 535.701;

2. The Commission is considering proposing that the delegated authority of the Director of the Bureau of Trade Analysis in § 501.27(p) should be deleted. The authority permits the Bureau Director to require parties to agreements subject to the Monitoring Report regulations to report commodity data on a sub-trade basis. Such authority would be obsolete if the commodity data requirement is eliminated as proposed;

3. The Commission is considering proposing that the definition of sailing agreement in § 535.104(bb) should be revised to mean an agreement by or among ocean common carriers to coordinate their respective sailing or service schedules of ports, and/or the frequency of vessels calls at ports. The term does not include joint service agreements, or capacity rationalization agreements.

The Commission believes that the proposed definition is more descriptive of an actual agreement between carriers with limited sailing authority than the present definition, which includes authority to agree on the size and capacity of the vessels to be deployed by the parties.[33] The Commission believes that the present definition is more broadly descriptive of the authority of carriers in a vessel sharing agreement where the parties would conceivably rationalize capacity.

4. The Commission is considering proposing that exempt agreements optionally filed with the Commission under § 535.301(b) be exempt from the 45-day waiting period.

As previously discussed, the authority of the Commission under Section 16 of the Shipping Act, 46 U.S.C. 40103, to issue an exemption from the requirements of the statute is conditioned on the determination that the exemption would not result in a substantial reduction in competition or be detrimental to commerce. The Commission has already determined that agreements exempted under subpart C of part 535 from the filing

[33] Section 535.104(bb) presently defines a sailing agreement as an agreement between ocean common carriers to provide service by establishing a schedule of ports that each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity rationalization agreements.

requirements of the Shipping Act do not raise competitive concerns. As such, there is no need for a waiting period in cases where parties to an exempt agreement choose to file the agreement optionally with the Commission. An optionally filed exempt agreement should become effective upon filing;

5. The Commission is considering proposing that the CFR reference on the application for exemption procedures cited in § 535.301(c) be corrected and revised from § 502.67 to § 502.74. The reference is outdated and was not revised at the time when the exemption procedures were renumbered in a previous rulemaking;

6. The Commission is considering proposing that § 535.302(d) be revised to specify that agreement parties may seek assistance from the Director of the Bureau of Trade Analysis on whether an agreement modification would qualify for an exemption based on the types of exemptions strictly listed and identified in § 535.302, as intended, and not on a general basis as parties have mistakenly interpreted the regulation. The Commission tentatively finds the current regulation to be too open-ended and subject to misinterpretation;

7. The Commission is considering proposing that § 535.404(b) be revised to require that where parties reference port ranges or areas in the geographic scope of their agreement, the parties identify the countries included in such ranges or areas so that the Commission can accurately evaluate the agreement;

8. The Commission is considering proposing that the formatting requirements for the filing of agreement modifications in § 535.406 apply to all agreements identified in § 535.201 and subject to the filing regulations of part 535, except assessment agreements.[34] Currently, the regulations exempt modifications to marine terminal agreements from these requirements, which was based on an earlier exemption of certain marine terminal agreements from the waiting period statute which has since been repealed by the Commission; [35]

9. The Commission is considering proposing that, in § 535.501(b) on the electronic submission of the Information Form, the reference to diskette or CD–ROM be replaced with an external digital device. The use of diskettes to store information digitally has become outdated on most modern computers and replaced with more advanced technological devices;

10. The Commission is considering proposing that in § 535.502(b)(1) in reference to rate authority in an agreement that the phrase ''whether on a binding basis under a common tariff or a non-binding basis'' be deleted. This distinction of rate authority dates to a period when conferences were more prevalent and is no longer relevant;

11. The Commission is considering proposing that in § 535.502(c) the expansion of membership, in addition to the expansion of geographic scope as presently provided, be a modification that requires an Information Form for agreements with any authority identified in § 535.502(b), *i.e.,* rate, pooling, capacity, or service contracting. As with an expansion of geographic scope, an expansion of membership could have a competitive impact that would need to be analyzed with current Information Form data;

12. The Commission is considering proposing, for the same reasons discussed above, that in § 535.701(e) [as redesignated from the current § 535.701(d)] on the electronic submission of Monitoring Reports, the reference to diskette or CD–ROM be replaced with external digital device;

13. The Commission is considering proposing that § 535.701(f) [as redesignated from the current § 535.701(e)] be revised to state simply that the submission of reports and meeting minutes pertaining to agreements that are required by these regulations may be filed by direct secure electronic transmission in lieu of hard copy, and that detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis.

The regulations under this section in its current state pertain to procedures that are now obsolete and should be deleted to avoid any confusion on the part of filers;

14. The Commission is considering proposing, for the reasons discussed above, that the phrase ''whether on a binding basis under a common tariff or a non-binding basis'' in § 535.702(a)(2)(i) be deleted in reference to rate authority;

15. The Commission is considering proposing that in § 535.702(b), rather than using market share data filed by the parties to agreements, the Bureau of Trade Analysis would notify the parties of any changes in their reporting requirements.[36] As discussed above, the Commission is considering proposing that the market share requirement of the Monitoring Report regulations for agreements with rate authority be discontinued. As such, parties to rate agreements would no longer be filing market share data. Commission staff could use its own subscriptions of commercial data to determine any changes in the reporting requirements of rate agreements and notify the parties accordingly; and

16. The Commission is considering proposing that regulations on the commodity data requirements of the Monitoring Report in § 535.703(d) be deleted. As discussed, the Commission is considering proposing that the commodity data requirements be discontinued, and if adopted, this section would be obsolete.

By the Commission.

Karen V. Gregory,

Secretary.

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[34] Section 535.104(d) defines assessment agreements to mean an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized. Section 535.401(e) requires that assessment agreements be filed and effective upon filing with the FMC.

[35] FMC Docket No. 09–02, *Repeal of Marine Terminal Agreement Exemption,* 74 FR 65034 (Dec. 9, 2009).

[36] Only parties to rate agreements with a combined market share of 35 percent or more are required to file Monitoring Reports. 46 CFR 535.702(a)(2). If the market share of a rate agreement drops below 35 percent, the Bureau would notify the parties that the agreement is no longer subject to the Monitoring Report regulations.

FEDERAL MARITIME COMMISSION

46 CFR Parts 530 and 531

[Docket No. 16–05]

RIN 3072–AC53

Service Contracts and NVOCC Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is seeking comments on possible amendments to its rules governing Service Contracts and NVOCC Service Arrangements. These possible rule changes are intended to update, modernize, and reduce the regulatory burden.

DATES: Submit comments on or before: March 30, 2016.

ADDRESSES: You may submit comments by the following methods:

• *Email: secretary@fmc.gov.* Include in the subject line: ''Docket 16–05, [Commentor/Company name].'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-