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§ 532.6 Notices.

An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and the public by a prominent notice in its rules tariff.

[77 FR 33972, June 8, 2012]

Subpart C—Recordkeeping

§ 532.7 Recordkeeping and audit.

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.

(b) NRAs are subject to inspection and reproduction requests by the Commission. An NVOCC shall produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(a)(1), 41104(a)(2)(A) or other acts prohibited by the Shipping Act.

[77 FR 33972, June 8, 2012, as amended at 78 FR 42889, July 18, 2013; 85 FR 9684, Feb. 20, 2020]

§ 532.91 OMB control number issued pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0071.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

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APPENDIX A TO PART 535—INFORMATION FORM AND INSTRUCTIONS

APPENDIX B TO PART 535—MONITORING REPORT AND INSTRUCTIONS

AUTHORITY: 5 U.S.C. 553; 46 U.S.C., 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307, 46105.

SOURCE: 69 FR 64414, Nov. 4, 2004, unless otherwise noted.

Subpart A—General Provisions

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, and 19 of the Shipping Act of 1984 (''the Act'') (46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

§ 535.102 Purpose.

This part implements those provisions of the Act that govern agreements by or among ocean common carriers and agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

§ 535.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those types of agreements that must be accompanied by information submissions when they are first filed, and sets forth the kind of information for certain agreements that the Commission believes relevant to that review. Only information that is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) To further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commercial relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from the filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or

this part. To minimize delay in the implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, certain classes of agreements are exempt from the filing requirements of this part.

(e) Under the regulatory framework established by the Act, the role of the Commission as a monitoring agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective to assure their continued compliance with all applicable provisions of the Act. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those agreements that require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. Only information that is necessary to assure that the Commission's monitoring responsibilities will be fulfilled is requested.

(f) The Act requires that conference agreements contain certain mandatory provisions. Each conference agreement must:

(1) State its purpose;

(2) Provide reasonable and equal terms and conditions for admission and readmission to membership;

(3) Allow for withdrawal from membership upon reasonable notice without penalty;

(4) Require an independent neutral body to police the conference, if requested by a member;

(5) Prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act (46 U.S.C. 41105(1) or 41105(3));

(6) Provide for a consultation process;

(7) Establish procedures for considering shippers' requests and complaints; and

(8) Provide for independent action.

(g) To promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

§ 535.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement, or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means 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 manhour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Capacity rationalization* means 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.

(f) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) Only with respect to those commodities.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers that provides for the fixing of and adherence to uniform tariff rates, charges, practices, and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(i) *Cooperative working agreement* means an agreement that establishes exclusive, preferential, or cooperative working relationships that are subject to the Act, but that do not fall precisely within the parameters of any specifically defined agreement.

(j) *Effective agreement* means an agreement effective under the Act.

(k) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such ocean common carriers associate for the purpose of gaining reciprocal access to cargo that is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(l) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine, and investigate alleged breaches or violations of the conference agreement and/or the conference's properly promulgated tariffs, rules, or regulations by any member of the conference.

(m) *Information Form* means the form containing economic information that must accompany the filing of certain agreements and modifications.

(n) *Interconference agreement* means an agreement between conferences.

(o)(1) *Joint service agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established that:

(i) Holds itself out in its own distinct operating name;

(ii) Independently fixes its own rates, charges, practices, and conditions of service or chooses to participate under its operating name in another agreement that is duly authorized to determine and implement such activities;

(iii) Independently publishes its own tariff or chooses to participate under its operating name in an otherwise established tariff;

(iv) Issues its own bills of lading; and

(v) Acts generally as a single carrier.

(2) The common use of facilities in a joint service may occur, and there is no competition between members for cargo in the agreement trade; but they otherwise maintain their separate identities.

(p) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants,

grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(q) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49 U.S.C. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

(r) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multi-employer bargaining group; but the term does not include an assessment agreement.

(s) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(t) *Monitoring Report* means the report containing economic information that must be filed at defined intervals with regard to certain agreements that are effective under the Act.

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(v) *Ocean freight forwarder* means a person in the United States that dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and processes the documentation or performs related activities incident to those shipments.

(w) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(x) *Pooling agreement* means an agreement between ocean common carriers that provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(y) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(z) *Rate,* for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(aa) *Rate agreement* means an agreement between ocean common carriers that authorizes the discussion of or agreement on, either on a binding basis under a common tariff or on a nonbinding basis, any kind of rate or charge.

(bb) *Sailing agreement* means 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.

(cc) *Service contract* means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(dd) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier (*i.e.*, a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier) that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(ee) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(ff) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(gg) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel space for use by another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity rationalization as defined in this subpart.

(hh) *Sub-trade* means the scope of ocean liner cargo carried between each U.S. port range and each foreign country within the scope of the agreement. U.S. port ranges are defined as follows:

(1) Atlantic and Gulf shall encompass ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. It also includes all ports bordering on the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands; and

(2) Pacific shall encompass all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. It also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

(ii) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(jj) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation and the publishing carrier performs the transportation on one leg of the through transportation on its own vessel or on a vessel on which it has rights to space under a filed and effective agreement. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than

the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier. An agreement that involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Act and this part.

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

Subpart B—Scope

§ 535.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) Control, regulate, or prevent competition in international ocean transportation; or

(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 exemptions 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 (46 U.S.C. 40103) shall be retained by the parties and shall be available upon request by the Office of the General Counsel for inspection during the term of the agreement and for a period of three years after its termination.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009; 90 FR 26223, June 20, 2025]

§ 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 (46 U.S.C. 40301(a)–(c)) 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 General Counsel 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).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009; 90 FR 26223, June 20, 2025]

§ 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 husbanding 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:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

(f) The filing fee for optional filing of nonexclusive transshipment agreements is provided in § 535.401(g).

§ 535.307 Agreements between or among wholly-owned subsidiaries and/or their parent—exemption.

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the Act (46 U.S.C. 40301(a)–(c)) between or among an ocean common carrier or marine terminal operator subject to the Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the Act and this part.

(c) Ocean common carriers are exempt from section 10(c) of the Act (46 U.S.C. 41105) to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) The filing fee for optional filing of these agreements is provided in § 535.401(g).

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

§ 535.309 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services. The term *marine terminal services agreement* does not include any agreement that conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other arrangement for the use of marine terminal facilities or property.

(b) All marine terminal services agreements as defined in § 535.309(a) are exempt from the filing and waiting period requirements of the Act and this part on condition that:

(1) They do not include rates, charges, rules, and regulations that are determined through a marine terminal conference agreement. *Marine terminal*

conference agreement means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members; and

(2) No antitrust immunity is conferred under the Act with regard to terminal services provided to an ocean common carrier under a marine terminal services agreement that is not filed with the Commission.

(c) The filing fee for optional filing of terminal services agreements is provided in § 535.401(g).

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

§ 535.310 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, that conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of the Act and this part.

(c) Parties to marine terminal facilities agreements currently in effect shall provide copies to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for optional filing of terminal facilities agreements is provided in § 535.401(g).

§ 535.311 Low market share agreements—exemption.

(a) Low market share agreement means any agreement among ocean common carriers which contains none of the authorities listed in § 535.502(b) and for which the combined market share, based on cargo volume, of the parties in any of the agreement's subtrades is either:

(1) Less than 30 percent, if all parties are members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b); or

(2) Less than 35 percent, if at least one party is not a member of another agreement in the same trade or subtrade containing any of the authorities listed in § 535.502(b).

(b) Low market share agreements are exempt from the waiting period requirement of the Act and this part, and are effective on filing.

(c) Parties to agreements may seek a determination from the General Counsel, as to whether a proposed agreement meets the general definition of a low market share agreement.

(d) The filing fee for low market share agreements is provided in § 535.401(g).

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20303, Apr. 19, 2005; 90 FR 26223, June 20, 2025]

§ 535.312 Vessel charter party-exemption.

(a) For purposes of this section, vessel charter party shall mean a contractual agreement between two ocean common carriers for the charter of the full reach of a vessel, which agreement sets forth the entire terms and conditions (including duration, charter hire, and geographical or operational limitations, if any) under which the vessel will be employed.

(b) Vessel charter parties, as defined in paragraph (a) of this section, are exempt from the filing requirements of the Act and this part.

(c) The filing fee for optional filing of vessel charter parties is provided in § 535.401(g).

Subpart D—Filing of Agreements

§ 535.401 General requirements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for

review and disposition pursuant to section 6 of the Act (46 U.S.C. 40304, 40306, 41307(b)–(d)), must be submitted to the Commission either in paper during regular business hours to the Secretary, Federal Maritime Commission, Washington, DC 20573, or electronically using the automated agreement filing system.

(1) *Paper filings.* Paper filings must include:

(i) A true copy and seven additional copies of the executed agreement;

(ii) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and

(iii) A letter of transmittal as described in paragraph (b) of this section.

(2) *Electronic filings.* (i) Electronic filings using the automated agreement filing system must be made in accordance with the instructions found on the Commission's home page, *http://www.fmc.gov.*

(ii) Electronic filings must include searchable Portable Document Format (PDF) copies of the following:

(A) A true copy of the executed agreement;

(B) Where required by this part, a completed Information Form referenced at subpart E of this part; and

(C) A letter of transmittal as described in paragraph (b) of this section.

(b) The letter of transmittal shall:

(1) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed;

(2) Provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(3) Clearly provide the typewritten or otherwise imprinted name, position, business address, and telephone number of the filing party; and

(4) Be signed by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party. A faxed, photocopied, or scanned signature will be accepted.

(c) To facilitate the timely and accurate publication of the FEDERAL REGISTER Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(d) Any agreement that does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 535.601(b).

(e) Assessment agreements shall be filed and shall be effective upon filing.

(f) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the 45-day waiting period required under the Act.

(g) The filing fee is $3,980 for new agreements and $4,637 for any agreement modifications requiring Commission review and action; $1,174 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); $343 for carrier exempt agreements; and $96 for terminal exempt agreements.

(h) The fee for a request for expedited review of an agreement pursuant to § 535.605 is $151. This fee must be paid in addition to the carrier agreement filing fee required by paragraph (g) of this section.

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 10330, Mar. 3, 2005; 74 FR 50728, Oct. 1, 2009; 75 FR 29455, May 26, 2010; 81 FR 24705, Apr. 27, 2016; 81 FR 59145, Aug. 29, 2016; 83 FR 50295, Oct. 5, 2018; 85 FR 72578, Nov. 13, 2020; 88 FR 16898, Mar. 21, 2023]

§ 535.402 Complete and definite agreements.

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, unless those details are matters specifically

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 typewritten 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

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

(6) Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

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

Subpart E—Information Form Requirements

§ 535.501 General requirements.

(a) Agreements and modifications to agreements identified in § 535.502 shall be accompanied by an Information Form containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to an agreement subject to this subpart shall complete and submit an original and five copies of the Information Form at the time the agreement is filed. A copy of the Form in *Microsoft Word* and *Excel* format may be downloaded from the Commission's home page at *http://www.fmc.gov*, or a paper copy of the Form may be obtained from the Commission. In lieu of submitting paper copies, parties may complete and submit their Information Form in the Commission's prescribed electronic format, either on diskette or CD–ROM, or submit the Information Form using the automated agreement filing system in accordance with the instructions found on the Commission's home page, *http://www.fmc.gov*.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. If a party to the agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) Agreement parties may supplement the Information Form with any additional information or material to assist the Commission's review of an agreement.

(e) The Information Form and any additional information submitted in conjunction with the filing of an agreement shall not be disclosed by the Commission except as provided in § 535.608.

[69 FR 64414, Nov. 4, 2004, as amended at 81 FR 24706, Apr. 27, 2016; 90 FR 26223, June 20, 2025]

§ 535.502 Agreements subject to the Information Form requirements.

Agreements and modifications to agreements between or among ocean common carriers subject to this subpart are:

(a) All agreements identified in § 535.201(a), except for low market share agreements identified in § 535.311;

(b) Modifications to an agreement that add any of the following authorities:

(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; and

(c) Modifications that expand the geographic scope of an agreement containing any authority identified in § 535.502(b).

§ 535.503 Information Form.

(a) The Information Form, with instructions, for agreements and modifications to agreements subject to this subpart, are set forth in sections I through V of appendix A of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Information Form shall apply as follows:

(1) Sections I and V shall be completed by parties to all agreements identified in § 535.502;

(2) Section II shall be completed by parties to agreements identified in § 535.502(a) that contain any of the following authorities: the charter or use of vessel space in exchange for compensation or services; or the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such

authorities do not include the establishment of a joint service, nor capacity rationalization;

(3) Section III shall be completed by parties to agreements identified in § 535.502 that contain the authority to discuss or agree on capacity rationalization; and

(4) Section IV shall be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) 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;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

§ 535.504 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the Information Form requirements in this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Information Form to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the General Counsel, Federal Maritime Commission, Washington, DC 20573–0001, and shall state:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief;

(4) Why granting the requested waiver will not substantially impair effective review of the agreement; and

(5) A description of the full membership, geographic scope, and authority of the agreement or the agreement modification that is to be filed with the Commission.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

[69 FR 64414, Nov. 4, 2004, as amended at 90 FR 26223, June 20, 2025]

Subpart F—Action on Agreements

§ 535.601 Preliminary review-rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 535.504.

(b)(1) The Commission shall reject any agreement that fails to comply substantially with the filing and Information Form of the Act and this part. The Commission shall notify the filing party in writing of the reason for rejection of the agreement. The original filing, along with any supplemental information or documents submitted, shall be returned to the filing party.

(2) Should a rejected agreement be refiled, the full 45-day waiting period will apply to the refiled agreement.

§ 535.602 Federal Register notice.

(a) A notice of any filed agreement will be transmitted to the FEDERAL REGISTER within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) A request for comments, including relevant information and documents, regarding the agreement and the date by which comments should be submitted in order to be most useful to

the Commission's review of the agreement.

[69 FR 64414, Nov. 4, 2004, as amended at 85 FR 9684, Feb. 20, 2020]

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments, including relevant information and documents, regarding a filed agreement. Commenters may submit the comment by email to *secretary@fmc.gov* or deliver to Secretary, Federal Maritime Commission, 800 N Capitol St. NW, Washington, DC 20573–0001. The Commission will treat such comments as confidential in accordance with § 535.608.

(b) The filing of a comment does not entitle a person to:

(1) A reply to the comment by the Commission;

(2) The institution of any Commission or court proceeding;

(3) Discussion of the comment in any Commission or court proceeding concerning the filed agreement; or

(4) Participation in any proceeding that may be instituted.

[69 FR 64414, Nov. 4, 2004, as amended at 85 FR 9684, Feb. 20, 2020]

§ 535.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the later of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the FEDERAL REGISTER.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act (46 U.S.C. 40304(d)). A new 45-day waiting period begins on the date of receipt of all the additional material requested or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order or the Commission grants expedited review.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009; 74 FR 65036, Dec. 9, 2009]

§ 535.605 Requests for expedited review.

(a) Upon written request of the filing party, the Commission may shorten the waiting period. In support of a request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. In reviewing requests, the Commission will consider the parties' needs and the Commission's ability to complete its review of the agreement's potential impact. In no event, however, may the period be shortened to less than fourteen (14) days after the publication of the notice of the filing of the agreement in the FEDERAL REGISTER. When a request for expedited review is denied, the normal 45-day waiting period will apply. Requests for expedited review will not be granted routinely and will be granted only on a showing of good cause. Good cause would include, but is not limited to, the impending expiration of the agreement; an operational urgency; Federal or State imposed time limitations; or other reasons that, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited review will be considered for an agreement whose 45-day waiting period has begun anew after being stopped by a request for additional information.

§ 535.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documents necessary to complete the statutory review required by the Act. The request shall be made prior to the expiration of the 45-day waiting period. All responses to a request for additional information shall be submitted to the Office of the General Counsel, Federal Maritime Commission, Washington, DC 20573.

(b) Where the Commission has made a request for additional information, the agreement's effective date will be

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

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

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

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009; 90 FR 26223, June 20, 2025]

§ 535.607 Failure to comply with requests for additional information.

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

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

(1) Order compliance with the request;

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

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

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

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

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under 46 U.S.C. ch. 403, all information and documents submitted to the Commission by the filing party(ies) or third parties regarding an agreement will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, replies to requests for additional information, and third-party comments.

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

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

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

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

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009; 85 FR 9684, Feb. 20, 2020]

§ 535.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in these negotiations.

Subpart G—Reporting Requirements

§ 535.701 General requirements.

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

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

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

(d) Monitoring Reports and minutes required to be filed by this subpart should be submitted to: General Counsel, Federal Maritime Commission, Washington, DC 20573–0001. A copy of the Monitoring Report form in Microsoft Word and Excel format may be downloaded from the Commission's home page at *http://www.fmc.gov*, or a paper copy may be obtained from theCommission. In lieu of submitting paper copies, parties may complete and submit their Monitoring Reports in the Commission's prescribed electronic format, either on diskette or CD-ROM.

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

(2) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

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

(g) A complete response in accordance with the instructions on the Monitoring Report shall be supplied to each item. If a party to an agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

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

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted by a particular agreement will be exempt from

disclosure under 5 U.S.C. 552, except to the extent:

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

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

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

(j) Monitoring Report or alternative periodic reporting requirements in this subpart shall not be construed to authorize the exchange or use by or among agreement members of information required to be submitted.

[69 FR 64414, Nov. 4, 2004, as amended at 90 FR 26223, June 20, 2025]

EFFECTIVE DATE NOTE: At 69 FR 64414, Nov. 4, 2004, paragraph (e) of § 535.701 was stayed indefinitely. At 90 FR 26223, June 20, 2025, paragraph (e) was amended; however, the amendment could not be incorporated due to the indefinite stay on the paragraph.

§ 535.702 Agreements subject to Monitoring Report and alternative periodic reporting requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are:

(1) An agreement that contains the authority to discuss or agree on capacity rationalization; or

(2) Where the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities:

(i) 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;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

(b) The determination of an agreement's reporting obligation under § 535.702(a)(2) in the first instance shall be based on the market share data reported on the agreement's Information Form pursuant to § 535.503. Thereafter, at the beginning of each calendar year, the Office of the General Counsel will notify the agreement parties of any changes in its reporting requirements based on market share data reported on the agreement's quarterly Monitoring Report for the previous second quarter (April-June).

(c) The Commission may require, as necessary, that the parties to an agreement with market share below the 35 percent threshold, as identified and defined in § 535.702(a)(2), submit Monitoring Reports pursuant to § 535.703.

(d) In addition to or instead of the Monitoring Report in § 535.703, the Commission may prescribe, as necessary, alternative periodic reporting requirements for parties to any agreement identified in § 535.201.

[69 FR 64414, Nov. 4, 2004, as amended at 90 FR 26223, June 20, 2025]

§ 535.703 Monitoring Report form.

(a) For agreements subject to the Monitoring Report requirements in § 535.702(a), the Monitoring Report form, with instructions, is set forth in sections I through III of appendix B of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Monitoring Report shall apply as follows:

(1) Section I shall be completed by parties to agreements identified in § 535.702(a)(1);

(2) Section II shall be completed by parties to agreements identified in § 535.702(a)(2); and

(3) Section III shall be completed by parties to all agreements identified in § 535.702(a).

(c) In accordance with the requirements and instructions in appendix B of this part, parties to an agreement subject to part 2(C) of section I of the Monitoring Report shall submit a narrative statement on any significant reductions in vessel capacity that the parties will implement under the agreement. The term ''a significant reduction'' is defined in appendix B. The narrative statement shall be submitted to the Office of the General Counsel, no later than 15 days after a significant reduction in vessel capacity has been

agreed upon by the parties but prior to the implementation of the actual reduction under the agreement.

(d)(1) The Commission may require, in its discretion, that the information on the top agreement commodities in part 4 of section II of the Monitoring Report be reported on a sub-trade basis, as defined in appendix B of this part, rather than on an agreement-wide basis. When commodity sub-trade information is required under this section, the Commission shall notify the parties to the agreement.

(2) For purposes of §535.703(d)(1), the top agreement commodities shall mean the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the agreement parties in each sub-trade within the geographic scope of the agreement during the calendar quarter. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades shall be stated separately. All other instructions, definitions, and terms shall apply as specified and required in appendix B of this part.

[69 FR 64414, Nov. 4, 2004, as amended at 90 FR 26223, June 20, 2025]

§535.704 Filing of minutes.

(a) *Agreements required to file minutes.* (1) This section applies to agreements authorized to engage in any of the following activities: discussion or establishment of any type of rates or charges, whether in tariffs or service contracts; pooling or apportionment of cargo traffic; discussion of revenues, losses, or earnings; or discussion or agreement on service contract matters, including the establishment of voluntary service contract guidelines.

(2) Each agreement to which this section applies shall file with the Commission, through a designated official, minutes of all meetings defined in paragraph (b) of this section, except as provided in paragraph (d) of this section.

(b) *Meetings.* For purposes of this subpart, the term meeting shall include all discussions at which any agreement is reached among any number of the parties to an agreement relating to the business of the agreement, and all other discussions among three or more members of the agreement (or all members if fewer than three) relating to the business of the agreement. This includes, but is not limited to, meetings of the members' agents, principals, owners, officers, employees, representatives, committees, or subcommittees, and communications among members facilitated by agreement officials. Discussions conducted by telephone, electronic device, or other means are included.

(c) *Content of minutes.* Minutes shall include the following:

(1) The date, time, and place of the meeting;

(2) A list of participants and companies represented;

(3) A description of discussions detailed enough so that a non-participant reading the minutes could reasonably gain a clear understanding of the nature and extent of the discussions and, where applicable, any decisions reached. Such description need not disclose the identity of the parties that participated in the discussion or the votes taken; and

(4) Any report, circular, notice, statistical compilation, analytical study, survey, or other work distributed, discussed, or exchanged at the meeting, whether presented by oral, written, electronic, or other means. Where the aforementioned materials are reasonably available to the public, a citation to the work or relevant part thereof is acceptable in lieu of the actual work. Any documents submitted to the Commission pursuant to this section need not disclose the identity of the party or parties that circulated the document at the meeting.

(d) *Exemption.* For parties to agreements subject to this section, the following exemptions shall apply:

(1) Minutes of meetings between parties are not required to reflect discussions of matters set forth in §535.408(b)(2), (b)(3), (b)(4)(iii), (b)(4)(iv), (b)(4)(v), and (b)(4)(vi);

(2) Minutes of meetings between parties are not required to reflect discussion of matters set forth in §535.408(b)(5) to the extent that such discussions involve minor operational matters that have little or no impact on the frequency of vessel calls at ports

or the amount of vessel capacity offered by the parties in the geographic scope of the agreement; and

(3) Minutes of meetings between parties are not required to reflect discussions of or actions taken with regard to rates that, if adopted, would be required to be published in an appropriate tariff. This exemption does not apply to discussions concerning general rate policy, general rate changes, the opening or closing of rates, service contracts, or time/volume rates.

(e) *Serial numbers.* Each set of minutes filed with the Commission shall include the agreement name and FMC number and a unique identification number indicating the sequence in which the meeting took place during the calendar year.

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20303, Apr. 19, 2005]

§ 535.705 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the General Counsel, Federal Maritime Commission, Washington, DC 20573–0001, and shall state and provide the following:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief; and

(4) Why granting the requested waiver will not substantially impair effective monitoring of the agreement.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

[69 FR 64414, Nov. 4, 2004, as amended at 90 FR 26223, June 20, 2025]

Subpart H—Mandatory and Prohibited Provisions

§ 535.801 Independent action.

(a) Each conference agreement shall specify the independent action (''IA'') procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act (46 U.S.C. 40303(b)(8)).

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that

member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) As it pertains to this part, ''adopt'' means the assumption in identical form of an originating member's independent action rate or service item, or a particular portion of such a rate or service item. If a carrier adopts an IA at a lower rate than the conference rate when there is less than 30 days remaining on the original IA, the adopted IA should be made to expire 30 days after its effectiveness to comply with the statutory 30-day notice requirement. In the case of an independent action time/volume rate (''IA TVR''), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than ''adopt'' (e.g., ''follow,'' ''match'') can be used to describe the action of assuming as one's own an initiating carrier's IA. Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and must be published pursuant to the IA publication and notice provisions of the applicable agreement.

(2) An IA TVR published by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (*i.e.*, a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering that results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier's IA TVR. Member lines may publish and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already published by another carrier.

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement may not permit the conference to unilaterally designate an expiration date for an independent action taken by a member line. The right to determine the duration of an IA remains with the member line, and a member line must be given the opportunity to designate whatever duration it chooses for its IA, regardless if the duration is for a specified period or open ended. Only in instances where a member line gives its consent to the conference, or where a member line freely elects not to provide for the duration of its IA after having been given the opportunity, can the conference designate an expiration date for the member line's IA.

(i) Any new conference agreement or any modification to an existing conference agreement that does not comply with the requirements of this section shall be rejected pursuant to § 535.601 of this part.

(j) If ratemaking is by sections within a conference, then any notice to the conference required by § 535.801 may be made to the particular ratemaking section.

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

§ 535.802 Service contracts.

(a) Ocean common carrier agreements may not prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with one or more shippers.

(b) Ocean common carrier agreements may not require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by section 8(c)(3) of the Act (46 U.S.C. 40502(d)).

(c) Ocean common carrier agreements may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate or enter into service contracts.

(d) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of the members of the agreement not to follow these guidelines.

(e) Voluntary guidelines shall be submitted to the Office of the General Counsel, Federal Maritime Commission, Washington, DC 20573–0001. Voluntary guidelines shall be kept confidential in accordance with §535.608 of this part. Use of voluntary guidelines prior to their submission is prohibited.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009; 90 FR 26223, June 20, 2025]

§535.803 Ocean freight forwarder compensation.

No conference or group of two or more ocean common carriers may:

(a) Deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(b) Agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

Subpart I—Penalties

§535.901 Failure to file.

Any person operating under an agreement, involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act (46 U.S.C. 40301(a)–(c) and 40302) and this part and not exempted pursuant to section 16 of the Act (46 U.S.C. 40103) or excluded from filing by the Act, that has not been filed and that has not become effective pursuant to the Act and this part is in violation of the Act and this part and is subject to the civil penalties set forth in section 13(a) of the Act (46 U.S.C. 41107).

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

§535.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable agreement information and/or reporting requirements pursuant to subparts E and G of this part, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act (46 U.S.C. 41107) and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50730, Oct. 1, 2009]

Subpart J—Paperwork Reduction

§535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The Commission intends that this section comply with the requirements of section 3507(a)(3) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement in the following table:

Section	Current OMB control No.
535.101 through 535.902	3072–0045

Appendix A to Part 535—Information Form and Instructions

Information Form Instructions

1. All agreements and modifications to agreements between or among ocean common carriers identified in 46 CFR 535.502 must be accompanied by a completed Information Form to the full extent required in sections I through V of this Form. Sections

I and V must be completed by all such agreements. In addition, sections II, III and IV must be completed, as applicable, in accordance with the authority contained in each agreement. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Form, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Information Form specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Form, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party.

2. For clarification of the agreement terminology used in this Form, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Form: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and *TEU* means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Form, the terms ''entire geographic scope of the agreement'' or ''agreement-wide'' refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term ''sub-trade,'' which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

SECTION I

Section I applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete parts 1 through 4 of this section. The authorities listed in part 4 of this section do not necessarily include all of the authorities that must be set forth in an agreement filed under the Act. The specific authorities between the parties to an agreement, however, must be set forth, clearly and completely, in a filed agreement in accordance with 46 CFR 535.402.

Part 1

State the full name of the agreement.

Part 2

Provide a narrative statement describing the specific purpose(s) of the agreement pertaining to the parties' business activities as ocean common carriers in the foreign commerce of the United States, and the commercial or other relevant circumstances within the geographic scope of the agreement that led the parties to enter into the agreement.

Part 3

List all effective agreements that cover all or part of the geographic scope of this agreement, and whose parties include one or more of the parties to this agreement.

Part 4(A)

Identify whether the agreement authorizes the parties to discuss, or agree upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge.

Part 4(B)

Identify whether the agreement authorizes the parties to establish a joint service.

Part 4(C)

Identify whether the agreement authorizes the parties to pool cargo traffic or revenues.

Part 4(D)

Identify whether the agreement authorizes the parties to discuss, or agree on, any service contract matter.

Part 4(E)

Identify whether the agreement authorizes the parties to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e).

Part 4(F)

Identify whether the agreement contains provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement.

Part 4(G)

Identify whether the agreement authorizes the parties to charter or use vessel space in exchange for compensation or services. This authority does not include capacity rationalization as referred to in part 4(E) of this section.

Part 4(H)

Identify whether the agreement authorizes the parties to rationalize sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. This authority does not include the establishment of a joint service or capacity rationalization as referred to in parts 4(B) and 4(E) of this section.

SECTION II

Section II applies to agreements identified in 46 CFR 535.502(a) that contain any of the following authorities: a) the charter or use of vessel space in exchange for compensation or services; or b) the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a ''joint service,'' nor ''capacity rationalization'' as these terms are defined in 46 CFR 535.104 (o) and (e). Parties to agreements identified in this section must complete all items in part 1.

Part 1(A)

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

Part 1(B)

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term ''none'' in response to part 1(B) of this section.

SECTION III

Section III applies to agreements identified in 46 CFR 535.502 that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 and 2 of this section.

Part 1(A)

1. For the most recent calendar quarter for which complete data are available, provide the amount of vessel capacity for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would be covered by the agreement.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 1(B)

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 1(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would be covered by the agreement, carried on any vessel space counted under part 1(A) of this section, divided by its total vessel capacity as defined and derived in part 1(A) of this section, which quotient is multiplied by 100.

Part 1(C)

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the amounts of vessel capacity for the parties' liner services that would be covered by the agreement within the entire

geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change is anticipated or planned, it shall be noted with the term ''none'' in response to part 1(C) of this section.

Part 2(A)

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

Part 2(B)

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term ''none'' in response to part 2(B) of this section.

SECTION IV

Section IV applies to agreements identified in 46 CFR 535.502 that contain any of the following authorities: a) 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; b) the establishment of a joint service; c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete parts 1 through 5 of this section.

Part 1

1. For the most recent calendar quarter for which complete data are available, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

2. U.S. port ranges are defined as follows:

a. Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

b. Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

3. An application may be filed for a waiver of the definition of ''sub-trade'' under the procedures described in 46 CFR 535.504. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The parties must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

4. The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines

must be provided, stated separately in the format indicated.

5. If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Part 2

1. For each party that served all or any part of the geographic scope of the agreement during all or any part of the most recent 12-month period for which complete data are available, provide each party's total liner revenues within the geographic scope, total liner cargo carried within the geographic scope, and average revenue. For purposes of this Form, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that would fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues within the geographic scope divided by its total cargo carried within the geographic scope.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic scope, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, each party shall report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 3(A)

For the same 12-month period used in part 2 of this section, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that would fall under the agreement. For purposes of this Form, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 3(B)

Provide the cargo volume and revenue results for each party for each of the major commodities listed in part 3(A) of this section, corresponding to the same 12-month period and unit of measurement used. For purposes of this Form, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 3(A) of this section, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 3(A) of this section, it shall be noted by using a zero for that party in response to part 3(B) of this section.

Part 4(A)

For the same calendar quarter used in part 1 of this section, provide the amount of vessel capacity for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would fall under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar

quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 4(B)

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 4(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would fall under the agreement, carried on any vessel space counted under part 4(A) of this section, divided by its total vessel capacity as defined and derived in part 4(A) of this section, which quotient is multiplied by 100.

Part 4(C)

Provide a narrative statement on any significant changes, anticipated or planned for when the agreement goes into effect, in the amounts of vessel capacity for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change is anticipated or planned, it shall be noted with the term ''none'' in response to part 4(C) of this section.

Part 5(A)

For the same 12-month period used in parts 2 and 3 of this section, provide the number of vessel calls each party made at each port for its liner services that would fall under the agreement within the entire geographic scope of the agreement.

Part 5(B)

Provide a narrative statement on any significant changes, anticipated or planned for when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term ''none'' in response to part 5(B) of this section.

SECTION V

Section V applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part 1(B)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding a request for additional information or documents.

Part 1(C)

A representative of the parties shall sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

1. The collection of this information is authorized generally by section 15 of the Shipping Act of 1984 (46 U.S.C. 40104). The submission of this form is mandatory for parties to agreements that contain certain authorities.

2. You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the

form displays a valid OMB control number. The valid control number for this information collection is 3072–0045.

3. The time needed to complete and submit this form will vary depending on individual circumstances. The total estimated average time to complete this form is about 30 hours. This estimate includes reading the instructions, collecting necessary data, and compiling that data.

4. If you have any comments concerning the accuracy of the above estimate or have any suggestions for simplifying the form, please contact Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001; or by e-mail *secretary@fmc.gov*.

FMC Form–150 OMB Control No. 3072–0045

FEDERAL MARITIME COMMISSION
INFORMATION FORM FOR
AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

SECTION I

Part 1

Agreement Name: _____

Part 2

Narrative statement on agreement purpose, and commercial or other circumstances requiring the agreement: _____

_____

_____

Part 3

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part 4

This agreement includes:

(A) Authority to discuss or agree upon rates or charges?	Yes ☐	No ☐
(B) Joint service?	Yes ☐	No ☐
(C) Pooling of cargo traffic or revenues?	Yes ☐	No ☐
(D) Authority to discuss or agree on service contracts and their terms?	Yes ☐	No ☐
(E) Authority to discuss or agree on capacity rationalization?	Yes ☐	No ☐
(F) Conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services in the geographic scope?	Yes ☐	No ☐
(G) Authority to charter vessel space?	Yes ☐	No ☐
(H) Authority to rationalize sailings or services?	Yes ☐	No ☐

SECTION II

Part 1

(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]
[Port Names] Port 1 Port 2 Port 3 Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .

(B) Narrative statement on significant changes in vessel calls: _____

_____

_____

SECTION III

Part 1 Vessel Capacity And Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		

Etc. . . .

(C) Narrative statement on significant changes in vessel capacity: _____

_____

_____

Part 2 Vessel Calls

(A) Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]
[Port Names] Port 1 Port 2 Port 3 Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .

(B) Narrative statement on significant changes in vessel calls: _____

_____

_____

SECTION IV

Part 1 Market Share

Agreement-Wide Trade (or Sub-Trade): U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

Agreement Market Share:		
Line A [Name]	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Etc. . . .		
Total Non-Agreement	X,XXX	XX
Total Trade [or Sub-Trade]	X,XXX	100

Part 2 Total Liner Cargo and Revenues

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Time Period: [12-Months]

Carrier A	$	X,XXX	$
Carrier B	$	X,XXX	$
Carrier C	$	X,XXX	$
Etc. . . .			

Part 3 Top Liner Commodities

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Time Period: [Same 12-Months in part 2 of this section]

Commodity 1 [Name and 4-Digit Code]:		
TEUs [or other units]	X,XXX	X,XXX
Revenues	$	$
Commodity 2:		
TEUs	X,XXX	X,XXX
Revenues	$	$
Etc. . . .		

Part 4 Vessel Capacity and Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Time Period: [Same Calendar Quarter in part 1 of this section]

Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant changes in vessel capacity: _____

_____

_____

Part 5

(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same 12-Months in parts 2 and 3 of this section]
[Port Names] Port 1 Port 2 Port 3 Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .
(B) Narrative statement on significant changes in vessel calls: _____

_____

_____

SECTION V

Part 1 Contact Persons and Certification

(A) Person(s) to Contact Regarding Information Form.

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Fax Number _____

(6) E-Mail Address _____

(B) Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Fax Number _____

(6) E-Mail Address _____

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____

Relationship with parties to agreement ____

Signature _____

Date _____

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20304, Apr. 19, 2005; 74 FR 50730, Oct. 1, 2009]

APPENDIX B TO PART 535—MONITORING REPORT AND INSTRUCTIONS

MONITORING REPORT INSTRUCTIONS

1. All agreements between or among ocean common carriers identified in 46 CFR 535.702(a) must submit completed Monitoring Reports to the full extent required in sections I through III of this Report. Sections I and II must be completed, as applicable, in accordance with the authority contained in each agreement. Section III must be completed by all agreements subject to Monitoring Report requirements.

2. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Report, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Monitoring Report specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Report, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Report, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Report as a single agreement party.

3. For clarification of the agreement terminology used in this Report, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Report: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Report, the terms ''entire geographic scope of the agreement'' or ''agreement-wide'' refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term ''sub-trade,'' which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

SECTION I

Section I applies to agreements, identified in 46 CFR 535.702(a)(1), that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 through 3 of this section.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2(A)

1. For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that is covered by the agreement.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 2(B)

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 2(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that is covered by the agreement, carried on any vessel space counted under part 2(A) of this section, divided by its total vessel capacity as defined and derived in part 2(A) of this section, which quotient is multiplied by 100.

Part 2(C)

Provide a narrative statement on any significant reductions, to be implemented under the agreement, in the amounts of vessel capacity for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant reduction and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the reduction. The narrative statement for part 2(C) of this section shall be submitted to the Office of the General Counsel, no later than 15 days after a significant reduction in the amount of vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement. For purposes of this part, a significant reduction refers to the removal from a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant reduction excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar or greater capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade.

Part 2(D)

Excluding those changes already reported in part 2(C) of this section, provide a narrative statement on any other significant changes, implemented under the agreement during the preceding calendar quarter, in the amounts of vessel capacity for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that was subject to the change. For purposes of this part, a significant change refers to the addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels were temporarily repositioned or shifted from one service to another, or when vessel space was temporarily altered, or when vessels were removed from a liner service and vessels of similar capacity were substituted. It also excludes operational changes in vessels or vessel space that had little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change was implemented, it shall be noted with the term ''none'' in response to part 2(D) of this section.

Part 3

Provide a narrative statement on any significant changes, implemented under the agreement during the calendar quarter, in the number of vessel calls at a port for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that was subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that had little or no impact on the number of vessel calls at a port. If no significant change was implemented, it shall be noted with the term ''none'' in response to part 3 of this section.

SECTION II

Section II applies to agreements, identified in 46 CFR 535.702(a)(2), where the parties to the agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: a) 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; b) the establishment of a joint service; c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete parts 1 through 6 of this section.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2

1. For the preceding calendar quarter, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

2. U.S. port ranges are defined as follows:

a. Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

b. Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

3. An application may be filed for a waiver of the definition of ''sub-trade'' under the procedures described in 46 CFR 535.705. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternative definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form for the agreement.

4. The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

5. If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Part 3

1. For the preceding calendar quarter, provide each party's total liner revenues in the entire geographic scope of the agreement, total liner cargo carried in the entire geographic scope of the agreement, and average revenue. For purposes of this Report, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services

that fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues in the entire geographic scope divided by its total cargo carried in the entire geographic scope.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, each party shall report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 4(A)

For the preceding calendar quarter, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that fall under the agreement. For purposes of this Report, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 4(B)

For the preceding calendar quarter, provide the cargo volume and revenue results for each party for each of the major commodities listed in part 4(A) of this section, corresponding to the same unit of measurement used. For purposes of this Report, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 4(A) of this section, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 4(A) of this section, it shall be noted by using a zero for that party in response to part 4(B) of this section.

Part 5(A)

For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that falls under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 5(B)

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 5(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that falls under the agreement, carried on any vessel space counted under part 5(A) of this section, divided by its total vessel capacity as defined and derived in part 5(A) of this section, which quotient is multiplied by 100.

Part 5(C)

Provide a narrative statement on any significant changes in the amount of vessel capacity that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that was subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change would exclude instances when vessels were temporarily repositioned or shifted from one service to another, or when vessel space was temporarily altered, or when vessels were removed from a liner service and vessels of similar capacity were substituted. It also excludes operational changes in vessels and vessel space that had little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change occurred during the calendar quarter, it shall be noted with the term ''none'' in response to part 5(C) of this section.

Part 6

Provide a narrative statement on any significant changes in the number of vessel calls at a port that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that was subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that had little or no impact on the number of vessel calls at a port. If no significant change occurred during the calendar quarter, it shall be noted with the term ''none'' in response to part 6 of this section.

SECTION III

Section III applies to all agreements identified in 46 CFR 535.702(a). Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part 1(B)

A representative of the parties shall sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

Privacy Act and Paperwork Reduction Act Notice

1. The collection of this information is authorized generally by section 15 of the Shipping Act of 1984 (46 U.S.C. 40104). The submission of this form is mandatory for parties to agreements that contain certain authorities.

2. You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072–0045.

3. The time needed to complete and submit this form will vary depending on individual circumstances. The total estimated average time to complete this form is about 63.5 hours. This estimate includes reading the instructions, collecting necessary data, and compiling that data.

4. If you have any comments concerning the accuracy of the above estimate or have any suggestions for simplifying the form, please contact Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001; or by e-mail *secretary@fmc.gov*.

FMC Form–151 OMB Control No. 3072–0045

FEDERAL MARITIME COMMISSION
MONITORING REPORT FOR
AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

SECTION I

Part 1

Agreement Name: _____

FMC Number: _____

Carrier A [Name]:		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc.		
Carrier B:		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant reductions in vessel capacity to be implemented (submit statement no later than 15 days after a reduction has been agreed upon but prior to the implementation of the reduction): _____

(D) Narrative statement on other significant changes in vessel capacity implemented during the calendar quarter: _____

Part 3 Vessel Calls

Narrative statement on significant changes in vessel calls implemented during the calendar quarter: _____

Part 2 Vessel Capacity and Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Time Period: [Calendar Quarter]

SECTION II

Part 1

Agreement Name: _____

FMC Number: _____

Part 2 Market Share

Agreement-Wide Trade (or Sub-Trade): U.S. Inbound (or Outbound) Name

Time Period: [Calendar Quarter]

Agreement Market Share:		
Line A [Name]	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Etc. . . .		
Total Non-Agreement	X,XXX	XX
Total Trade [or Sub-Trade]	X,XXX	100

Part 3 Total Liner Cargo and Revenues

Time Period: [Calendar Quarter]

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Carrier A	$	X,XXX	$
Carrier B	$	X,XXX	$
Carrier C	$	X,XXX	$
Etc. . . .			

Part 4 Top Liner Commodities

Time Period: [Calendar Quarter]

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Commodity 1 [Name and 4-Digit Code]:		
TEUs [or other units]	X,XXX	X,XXX

Revenues	$	$
Commodity 2:		
TEUs	X,XXX	X,XXX
Revenues	$	$
Etc. . . .		

Part 5 Vessel Capacity and Utilization Time Period: [Calendar Quarter]

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Carrier A [Name]:		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc.		
Carrier B:		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant changes in vessel capacity that occurred during the calendar quarter: _____

_____

Part 6 Vessel Calls

Narrative statement on significant changes in vessel calls that occurred during the calendar quarter: _____

_____

_____

SECTION III

Part 1 Contact Person and Certification

(A) Person(s) To Contact Regarding Monitoring Report.

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Fax Number _____

(6) E-Mail Address _____

(B) Certification.

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____

Relationship with parties to agreement ____

Signature _____

Date _____

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50730, Oct. 1, 2009; 90 FR 26223, June 20, 2025]

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

Sec.

540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Insurance, guaranties, and escrow accounts.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Denial, revocation, suspension, or modification.
540.9 Miscellaneous.

FORM FMC–132A TO SUBPART A OF PART 540
FORM FMC–133A TO SUBPART A OF PART 540
APPENDIX A TO SUBPART A OF PART 540—EXAMPLE OF ESCROW AGREEMENT FOR USE UNDER 46 CFR 540.5(b)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

540.20 Scope.
540.21 Definitions.
540.22 Proof of financial responsibility, when required.
540.23 Procedure for establishing financial responsibility.