

§ 535.702

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more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

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

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

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

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

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

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

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

EFFECTIVE DATE NOTE: At 69 FR 64414, Nov. 4, 2004, paragraph (e) of § 535.701 was stayed indefinitely.

§ 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 Bureau of Trade Analysis 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.