

**§ 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 Director, Bureau of Trade Analysis, 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 stat-

ed separately. All other instructions, definitions, and terms shall apply as specified and required in appendix B of this part.

**§ 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.

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#### § 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 Director, Bureau of Trade Analysis, 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.

### 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.

(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