

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;
  - (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.

#### § 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 man-hour 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. The term does not include sailing agreements or space charter agreements.

(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 may occur, and there is no competition