

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[DOCKET NO. 88-8]

AGREEMENTS BETWEEN OR AMONG WHOLLY-OWNED
SUBSIDIARIES AND/OR THEIR PARENT -- EXEMPTION

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: This exempts agreements between or among wholly-owned subsidiaries and/or their parent from the filing and information form requirements of the Shipping Act of 1984 and the Commission's regulations. This also exempts such agreements from the proscription against concerted activities set forth at section 10(c) of the Shipping Act of 1984 and from the agreement retention requirement of 46 CFR 572.301(f).

EFFECTIVE DATE: The amendments to Part 572 are effective upon the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Crowley Maritime Corporation ("Crowley") filed on December 15, 1987 an application pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715 ("1984 Act"), requesting certain exemptions from statutory and regulatory provisions for itself and its present and future wholly-owned subsidiaries. Specifically, the Crowley application

requested exemptions from sections 5, 10(a)(2), 10(a)(3), and 10(c) of the 1984 Act to the extent these statutory provisions applied to agreements between or among Crowley and/or its subsidiaries. Crowley also sought an exemption from the Commission's implementing regulations, 46 CFR 572.301.

By Notice published in the Federal Register on December 28, 1987 (52 FR 48879), the Commission announced the Crowley application and requested comments thereon from interested persons. Subsequently, on January 28, 1988 (53 FR 2537), the Commission served Notice of Enlargement of Scope, inviting comment on whether the exemption requested by Crowley should apply on an industry-wide basis to all other ocean common carriers and marine terminal operators under the same terms and conditions as those proposed by Crowley. No comments on either Notice were received by the Commission.

After careful consideration of the Crowley application and of the issues raised in the Enlargement of Scope, the Commission has determined to grant the essential exemptions sought by Crowley, with some modifications. The Final Rule has been structured first to define the scope of the agreements on an industry-wide basis, followed by an enumeration of the exemptions themselves.

The amendments set forth herein incorporate the exemptions from the filing and Information Form requirements of section 5 of the 1984 Act and the Commission's

implementing regulations at 46 CFR 572.301, as sought by Crowley. The Commission also determined to relieve agreements within the scope of the exemption from the agreement retention requirement of 46 CFR 572.301(f).

The exemption from section 10(c) (prohibiting certain concerted activities) has been narrowed from that proposed by Crowley to apply only to the extent that the concerted actions proscribed by section 10(c) result solely from agreements between and among affiliated entities. Crowley's proposal could have been read to confer an exemption on those companies even if other non-affiliated companies were also part of the concerted action. The exemption issued herein is confined only to purely inter-subsiary and/or parent agreements.

Finally, the Commission has determined that it is not necessary to issue an exemption from the provisions of sections 10(a)(2) and 10(a)(3) of the 1984 Act. Each of those provisions applies to operations "under an agreement required to be filed under section 5 of this [the 1984] Act" Because agreements between or among wholly-owned subsidiaries and/or their parent are exempted herein from section 5, the prohibitions of sections 10(a)(2) and 10(a)(3) are implicitly inapplicable. It is therefore unnecessary to issue an explicit exemption to that effect.

In accordance with section 16 of the Shipping Act of 1984, the Commission finds that the exemption granted herein will not substantially impair effective regulation by the

Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Acting Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of this rule would be on marine terminal operators and common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities but that impact is not considered to be significant.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared.

List of Subjects in 46 CFR Part 572:

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and record-keeping requirements.

Therefore, pursuant to 5 U.S.C. 553, and sections 5, 16 and 17 of the Shipping Act of 1984, 46 U.S.C. 1704, 1715, 1716, in order to exempt certain marine terminal operator and common carrier agreements from certain requirements of the 1984 Act, and the Commission's implementing regulations thereof, Part 572 of Title 46 of the Code of Federal Regulations is amended as follows:

Part 572 - [AMENDED]

1. The authority citation to Part 572 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1717.

2. Section 572.308 is redesignated § 572.309.

3. A new § 572.308 is added to read as follows:

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

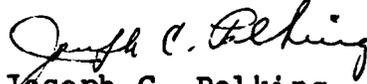
(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the 1984 Act between or among an ocean common carrier or marine terminal operator subject to the 1984 Act and any one or more ocean common carriers or marine terminal operators which 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 and information form requirements of the 1984 Act and of this part.

(c) Common carriers are exempt from section 10(c) of the 1984 Act 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) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the requirements of § 572.301(f) of this part.

By the Commission.


Joseph C. Polking
Secretary