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SUBCHAPTER A—GENERAL AND ADMINISTRATIVE PROVISIONS

PART 500—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

AUTHORITY: 5 U.S.C. 553; 5 U.S.C. 7301; 46 U.S.C. app. 1716.

§ 500.101 Cross-referrence to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Maritime Commission (''FMC'') should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

[60 FR 9787, Feb. 22, 1995]

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

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AUTHORITY: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

SOURCE: 59 FR 954, Jan. 7, 1994, unless otherwise noted.

Subpart A—Organization and Functions

§ 501.1 Purpose.

This part describes the organization, functions and Official Seal of, and the delegation of authority within, the Federal Maritime Commission (''Commission'').

§ 501.2 General.

(a) *Statutory functions.* The Commission regulates common carriers by water and other persons involved in the foreign and domestic offshore commerce of the U.S. under provisions of the Shipping Act, 1916, (46 U.S.C. app. 801–842); the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843–848); the Shipping Act of 1984 (46 U.S.C. app. 1701–1720); section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876); the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a); sections 2 and 3, Public Law 89–777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages (46 U.S.C. app. 817d and 817e); and other applicable statutes.

(b) *Establishment and composition of the Commission.* The Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961, and is composed of five Commissioners (''Commissioners'' or ''members''), appointed by the President, by and with the advice and consent of the Senate. Not more

than three Commissioners may be appointed from the same political party. The President designates one of the Commissioners to be the Chairman of the Commission (''Chairman'').

(c) *Terms and vacancies.* The term of each member of the Commission is 5 years and begins when the term of the predecessor of that member ends (i.e., on June 30 of each successive year), except that, when the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. A vacancy in the office of any Commissioner shall be filled in the same manner as the original appointment, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he or she succeeds. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) *Quorum.* A vacancy in the Commission, so long as there shall be three Commissioners in office, shall not impair the power of the Commission to execute its functions. Any three Commissioners in office constitute a quorum for the transaction of the business of the Commission, and the affirmative votes of any three Commissioners shall be sufficient for the disposition of any matter which may come before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient, with proxy votes of absent members permitted in order to obtain the required three affirmative votes. See Commission Order No. 84.

(e) *Meetings; records; rules and regulations.* The Commission shall, through its Secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein on every action and order approved or disapproved by the Commission. In addition to or in aid of its functions, the Commission adopts rules and regulations in regard to its powers, duties and functions under the shipping statutes it administers.

§ 501.3 Organizational components of the Federal Maritime Commission.

The major organizational components of the Commission are set forth in the Organization Chart attached as Appendix A to this part. An outline table of the components/functions follows:

(a) Office of the Chairman of the Federal Maritime Commission.
(*Chief Executive and Administrative Officer, and FOIA and Privacy Act Appeals Officer.*)
(1) Information Security Officer.
(2) Designated Agency Ethics Official.
(b) Offices of the Members of the Federal Maritime Commission. (*Include the Chairman, ADP Committee.*)
(c) Office of the Secretary. (*FOIA and Privacy Act Officer; Federal Register Liaison; Alternative Disputes Resolution Coordinator.*)
(1) Office of Informal Inquiries, Complaints and Informal Dockets.
(2) [Reserved]
(d) Office of the General Counsel. (*Ethics Official.*)
(e) Office of Administrative Law Judges.
(f) Office of Equal Employment Opportunity.
(g) Office of the Inspector General.
(h) Office of the Managing Director. (*Chief Operating Officer; Designated Senior IRM Official; Senior Procurement Executive and ATFI Contracting Officer; Audit Followup and Management Controls.*)
(1) Office of Information Resources Management. (*Senior IRM Manager; Computer Security; Forms Control; Records Management.*)
(2) [Reserved]
(i) Bureau of Economics and Agreement Analysis.
(1) Office of Agreements and Information Management.
(2) Office of Monitoring I.
(3) Office of Monitoring II.
(j) Bureau of Tariffs, Certification and Licensing.
(1) Office of Tariffs.
(2) Tariff Control Center.
(3) Office of Service Contracts and Passenger Vessel Operations.
(4) Office of Freight Forwarders.
(k) [Reserved]

(l) Bureau of Enforcement.
(1) New York District.
(2) Miami District.
(3) Los Angeles District.
(m) Bureau of Administration. (*Competition Advocate; Information Security; Principal Management Official on Small Agency Council.*)
(1) Office of Administrative Services. (*Physical Security; FMC Contracting Officer.*)
(2) Office of Budget and Financial Management. (*Chief Financial Officer.*)
(3) Office of Personnel.
(n) Boards and Committees.
(1) Executive Resources Board.
(2) Committee on Automated Data Processing.
(3) Performance Review Board.
(4) Incentive Awards Committee.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 62329, Dec. 5, 1994; 59 FR 67227, Dec. 29, 1994; 60 FR 57940, Nov. 24, 1995; 61 FR 51231, Oct. 1, 1996]

§501.4 Lines of responsibility.

(a) *Chairman.* The Office of the Secretary, the Office of the General Counsel, the Office of Administrative Law Judges, the Office of Equal Employment Opportunity, the Office of the Inspector General, the Office of the Managing Director, and officials performing the functions of Information Security Officer and Designated Agency Ethics Official, report to the Chairman of the Commission.

(b) *Office of the Managing Director.* The Bureau of Economics and Agreement Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Enforcement; and Bureau of Administration report to the Office of the Managing Director. The Offices of Equal Employment Opportunity and of the Inspector General receive administrative assistance from the Managing Director. All other units of the Commission receive administrative guidance from the Managing Director.

(c) *Bureau of Enforcement and Area Representatives.* The Area Representatives report to the Director, Bureau of Enforcement.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 67227, Dec. 29, 1994; 60 FR 57941, Nov. 24, 1995; 61 FR 51231, Oct. 1, 1996]

§501.5 Functions of the organizational components of the Federal Maritime Commission.

As further provided in subpart C of this part, the functions, including the delegated authority of the Commission's organizational components and/or officials to exercise their functions and to take all actions necessary to direct and carry out their assigned duties and responsibilities under the lines of responsibility set forth in §501.4, are briefly set forth as follows:

(a) *Chairman.* As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and assures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, and Managing Director with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals officer under both the Freedom of Information Act and the Privacy Act. The Chairman appoints the heads of major administrative units after consultation with other Commissioners. In addition, the Chairman, as ''head of the agency,'' has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

(1) Under the direction and management of the Office Director, the Office of Equal Employment Opportunity (''EEO'') ensures that statutory and regulatory prohibitions against discrimination in employment and the requirements for related programs are fully implemented. As such, the Office

administers and implements comprehensive programs on discrimination complaints processing, affirmative action and special emphasis. The Director, EEO, advises the Chairman regarding EEO's plans, procedures, regulations, reports and other matters pertaining to policy and the agency programs. Additionally, the Director provides leadership and advice to managers and supervisors in carrying out their respective responsibilities in equal employment opportunity. The Office administers and implements these program responsibilities in accordance with Equal Employment Commission (''EEOC'') Regulations at 29 CFR part 1614 and other relevant EEOC Directives and Bulletins.

(2) Under the direction and management of the Inspector General, the Office of Inspector General conducts, supervises and coordinates audits and investigations relating to the programs and operations of the Commission; reviews existing and proposed legislation and regulations pertaining to such programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect waste, fraud and abuse in, such programs and operations; and advises the Chairman and the Congress fully and currently about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(3) The Information Security Officer is a senior agency official designated under § 503.52 of this chapter to direct and administer the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356.

(4) The Designated Agency Ethics Official and Alternate are appropriate agency employees formally designated under 5 CFR 2638.202 and § 500.105 of this chapter to coordinate and manage the ethics program as set forth in 5 CFR 2638.203, which includes the functions of advising on matters of employee responsibilities and conduct under part 500 of this chapter, and serving as the Commission's designee(s) to the Office of Personnel Management on such matters. They provide counseling and guidance to employees on conflicts of interest and other ethical matters.

(b) *Commissioners*. The members of the Commission, including the Chairman, implement various shipping statutes and related directives by rendering decisions, issuing orders, and adopting and enforcing rules and regulations governing persons subject to the shipping statutes; and perform other duties and functions as may be appropriate under reorganization plans, statutes, executive orders, and regulations.

(c) *Secretary*. Under the direction and management of the Secretary, the Office of the Secretary:

(1) Is responsible for the preparation, maintenance and disposition of the official files and records documenting the business of the Commission. In this regard, the Office:

(i) Prepares and, as appropriate, publishes agenda of matters for action by the Commission, prepares and maintains the minutes with respect to such actions; signs, serves and issues, on behalf of the Commission, documents implementing such actions, and coordinates follow-up thereon.

(ii) Receives and processes formal and informal complaints involving alleged statutory violations, petitions for relief, special dockets applications (including the issuance of decisions therein), applications to correct clerical or administrative errors in service contracts, requests for conciliation service, staff recommendations for investigation and rulemaking proceedings, and motions and filings relating thereto.

(iii) Disseminates information regarding the proceedings, activities, functions, and responsibilities of the Commission to the maritime industry, news media, general public, and other government agencies. In this capacity the Office also:

(A) Administers the Commission's Freedom of Information Act, Privacy Act and Government in the Sunshine Act responsibilities; the Secretary serves as the Freedom of Information Act and Privacy Act Officer.

(B) Authenticates records of the Commission.

(C) Receives and responds to subpoenas directed to Commission personnel and/or records.

(D) Compiles and publishes the bound volumes of Commission decisions.

(E) Coordinates publication of documents, including rules and modifications thereto with the Office of the Federal Register; the Secretary serves as the Federal Register Liaison Officer and Certifying Officer.

(2) Through the Secretary and, in the absence or preoccupation of the Secretary, through the Assistant Secretary, administers oaths pursuant to 5 U.S.C. 2903(b).

(3) Coordinates Alternative Dispute Resolution activities within the Commission.

(4) Through the Office of Informal Inquiries, Complaints and Informal Dockets:

(i) Advises the Commission on significant public interest issues in current and proposed policies, programs, and decisions;

(ii) Receives, coordinates, and responds to informal inquiries, complaints, suggestions, and expressions of concern from the public and contacts carriers, conferences, and other persons to effect solutions;

(iii) Publicizes Commission policies, programs, and activities of interest to the Commission's shipping public; and

(iv) Adjudicates small claims ($10,000 or less) arising from alleged violations of the shipping statutes.

(d) *General Counsel.* Under the direction and management of the General Counsel, the Office of the General Counsel:

(1) Reviews for legal sufficiency all staff memoranda and recommendations that are presented for Commission action and staff actions acted upon pursuant to delegated authority under §§ 501.26(i) and 501.26(k).

(2) Provides written or oral legal opinions to the Commission, to the staff, and to the general public in appropriate cases.

(3) Prepares and/or reviews for legal sufficiency, before service, all final Commission decisions, orders, and regulations.

(4) Monitors, reviews and, as requested by the Committees of the Congress, the Office of Management and Budget, or the Chairman, prepares comments on all legislation introduced in the Congress affecting the Commission's programs or activities, and prepares draft legislation or amendments to legislation; coordinates such matters with the appropriate Bureau, Office or official and advises appropriate Commission officials of legislation which may impact the programs and activities of the Commission. Also prepares testimony for Congressional hearings and responses to requests from Congressional offices.

(5) Serves as the legal representative of the Commission in courts and in administrative proceedings before other Government agencies.

(6) Monitors and reports on international maritime developments, including laws and practices of foreign governments which affect ocean shipping; and identifies potential state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, researches their status, and makes recommendations to the Commission concerning their classification.

(7) Represents the Commission in U.S. Government interagency groups dealing with international maritime issues; serves as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions; and coordinates Commission activities through liaison with other Government agencies and programs and international organizations.

(8) Screens, routes, and maintains custody of U.S. Government and international organization documents, subject to the classification and safekeeping controls administered by the Commission's Information Security Officer.

(9) Reviews for legal sufficiency all adverse personnel actions, procurement activities, Freedom of Information Act and Privacy Act matters and other administrative actions.

(10) Manages the Commission's library and related services.

(e) *Administrative Law Judges.* Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges holds hearings and renders initial or

recommended decisions in formal rulemaking and adjudicatory proceedings as provided in the Shipping Act, 1916, Shipping Act of 1984, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

(f) *The Office of the Managing Director.* (1) The Managing Director:

(i) As senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the operating Bureaus of Enforcement; Administration; Economics and Agreement Analysis; and Tariffs, Certification and Licensing, as more fully described in paragraphs (g) through (k) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman;

(ii) Provides administrative guidance to all units of the Commission other than the operating bureaus listed in paragraph (f)(1) of this section, except the Offices of Equal Employment Opportunity and the Inspector General, which are provided administrative assistance;

(iii) Is the agency's Senior Procurement Executive under 41 U.S.C. 414(3) and Commission Order No. 112;

(iv) As the Designated Senior Information Resources Management Official under 44 U.S.C. 501–520 and 3501–3520 and Commission Order No. 117, reviews recommendations of the Commission's Committee on Automated Data Processing and submits them to the Chairman under Commission Orders Nos. 98 and 117;

(v) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders Nos. 103 and 106; and

(vi) Is the agency's Chief Operating Officer, as appointed by the Chairman in response to the President's October 1, 1993, memorandum on management reform.

(2) The Office of Managing Director ensures the periodic review and updating of Commission orders.

(3) A Deputy Managing Director, reporting directly to the Managing Director, supervises the development of, and serves as Contracting Officer for, the Commission's Automated Tariff Filing and Information (''ATFI'') System.

(4) Is responsible for the administration and coordination of the Office of Information Resources Management. The *Office of Information Resources Management,* under the direction and management of the Office Director, provides administrative support with respect to information resources management to the program operations of the Commission. The Office interprets governmental policies and programs for information management and administers these in a manner consistent with Federal guidelines. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Office's major functions include: administration of the information resources management program under the Paperwork Reduction Act; management studies and surveys; data telecommunications/database management and application development; records management; IRM contract administration; development of Paperwork Reduction Act clearances for submission to the Office of Management and Budget; computer security; and forms management. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the Committee on Automated Data Processing.

(g) Under the direction and management of the Bureau Director, the *Bureau of Economics and Agreement Analysis* develops and administers programs in connection with the anticompetitive and cooperative arrangements and practices of common carriers by water, freight forwarders and terminal operators in the foreign and domestic commerce of the U.S., including the filing of common carrier agreements under section 15 of the Shipping Act, 1916, ocean common carrier agreements under section 5 of the Shipping Act of 1984, the financial reporting by ocean

common carriers in the domestic offshore trades, and the filing of agreements by marine terminal operators under section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984. The Bureau provides expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices under section 19 of the Merchant Marine Act, 1920, the Foreign Shipping Practices Act of 1988, and domestic offshore rate-of-return cases under the Intercoastal Shipping Act, 1933.

(h) *Bureau of Tariffs, Certification and Licensing.* Under the direction and management of the Bureau Director, the *Bureau of Tariffs, Certification and Licensing* plans, develops and administers programs in connection with tariffs filed by common carriers and marine terminal operators; ocean common carrier service contracts; financial responsibility of non-vessel operating common carriers; licensing ocean freight forwarders; certifying the financial responsibility of passenger vessel owners and operators. These programs carry out the provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933; the Shipping Act of 1984; and Pub. L. 89-777, as implemented under Parts 510, 514, 540, 552, 582, and 583 of this chapter. The Bureau maintains tariff data filed in electronic form on the Commission's Automated Tariff Filing and Information System (''ATFI''). The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to these programs. It also cooperates with other Commission components with regard to the enforcement of the Commission's regulatory requirements, and provides expert testimony and support in formal proceedings. The Bureau's program activities are carried out by the Office of Tariffs, the Office of Service Contracts and Passenger Vessel Operations and the Office of Freight Forwarders.

(i) *Bureau of Enforcement; Area Representatives.* Under the direction and management of the Bureau Director, the Bureau of Enforcement:

(1) Participates as trial counsel in formal Commission proceedings when designated by Commission order, or when intervention is granted;

(2) Initiates, processes and negotiates the informal compromise of civil penalties under § 501.28 of this part and § 502.604 of this chapter, and represents the Commission in proceedings and circumstances as designated;

(3) Acts as staff counsel to the Managing Director and other bureaus and offices;

(4) Coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters; and

(5) Conducts investigations leading to enforcement action, advises the Federal Maritime Commission of evolving competitive practices in international and domestic offshore commerce, assesses the practical repercussions of Commission regulations, educates the industry regarding policy and statutory requirements, assists in the resolution of disputes within the industry, and provides liaison, cooperation, and other coordination between the Commission and the maritime industry, shippers, and other government agencies.

(6) Maintains a presence in locations other than Washington, D.C. through Area Representatives whose activities include the following:

(i) Representing the Commission within their respective geographic areas;

(ii) Providing liaison between the Commission and the shipping industry and interested public; conveying pertinent information regarding regulatory activities and problems; and recommending courses of action and solutions to problems as they relate to the shipping public, the affected industry, and the Commission;

(iii) Furnishing to interested persons information, advice, and access to Commission public documents;

(iv) Receiving and resolving informal complaints, in coordination with the Director, Office of Informal Inquiries, Complaints and Informal Dockets;

(v) Investigating potential violations of the shipping statutes and the Commission's regulations;

(vi) Conducting shipping industry surveillance programs to ensure compliance with the shipping statutes and

Commission regulations. Such programs include common carrier audits, service contract audits and compliance checks of ocean freight forwarders;

(vii) Upon request of the Bureau of Tariffs, Certification and Licensing, auditing passenger vessel operators to determine the adequacy of performance bonds and the availability of funds to pay liability claims for death or injury, and assisting in the background surveys of ocean freight forwarder applicants;

(viii) Conducting special surveys and studies, and recommending policies to strengthen enforcement of the shipping laws;

(ix) Maintaining liaison with Federal and State agencies with respect to areas of mutual concern; and

(x) Providing assistance to the various bureaus and offices of the Commission as appropriate and when requested.

(j) [Reserved]

(k) Under the direction and management of the Bureau Director, the Bureau of Administration is responsible for the administration and coordination of the Offices of: Administrative Services; Budget and Financial Management; and Personnel. The Bureau provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these is a manner consistent with Federal guidelines, including those involving procurement, financial management and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Office of the Bureau Director is responsible for directing and administering the Commission's training and development function. The Bureau Director is the Commission's Competition Advocate under 41 U.S.C. 418(a) and Commission Order No. 112, as well as the Commission's representative, as Principal Management Official, to the Small Agency Council. Other Bureau programs are carried out by its Offices, as follows:

(1) The Office of Administrative Services, under the direction and management of the Office Director, directs and administers a wide variety of management support service functions of the Commission. The Director of the Office is the Commission's principal Contracting Officer under Commission order No. 112. Programs include communications; audio and voice telecommunications; procurement of and contracting for administrative goods and services, including the utilization of small and disadvantaged businesses; management of property, space, printing and copying; mail and records services; Forms and graphic designs; facilities; and equipment maintenance; and transportation.

(2) The Office of Budget and Financial Management, under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees. The Director of the Office is the Commission's Chief Financial Officer.

(3) The Office of Personnel, under the direction and management of the Office Director, plans and administers a complete personnel management program including: Recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; and personnel security. The Director of the Office is the Chairman of the Incentive Awards Committee.

(l) *Boards and Committees.* The following boards and committees are established by separate Commission orders

(''C.O.'') to address matters relating to the overall operations of the Commission:

(1) The Executive Resources Board is comprised of three voting members, chosen from the ranks of those above the grade 15 level, with the majority being career members of the Senior Executive Service. The members serve staggered terms of three years, beginning October 1 of each year; the member serving in the last year of his/her term serves as Chairman. The board meets on an ad hoc basis to discuss, develop and submit recommendations to the Chairman on matters related to the merit staffing process for career appointments in the Senior Executive Service, including the executive qualifications of candidates for career appointment. The board also plans and manages the Commission's executive development programs. Serving the board in a non-voting advisory capacity are the Director, Office of Equal Employment Opportunity, the Training Officer, and the Director, Office of Personnel, who also serves as the board's secretary. C.O. No. 95.

(2) The Committee on Automated Data Processing is chaired by a Commissioner designated by the Chairman, and is comprised of the Directors of the Bureaus of Economics and Agreement Analysis; Tariffs, Certification and Licensing; Administration; and Enforcement; the General Counsel; the Secretary; the Inspector General; the Director, Office of Equal Employment Opportunity; the Chief Administrative Law Judge; a representative of the Chairman's office; the Deputy Managing Director in charge of the Commission's Automated Tariff Filing and Information System; and the Director, Office of Information Resources Management, who serves as Committee Coordinator for the Committee Chairperson. The Committee meets on an ad hoc basis to review, evaluate, and recommend to the Chairman, through the Managing Director, policies and actions on the acquisition, management, and use of ADP equipment and services. C.O. No. 98.

(3) The Performance Review Board is chaired by a Commissioner designated by the Chairman, and is composed of a standing register of members which is published in the FEDERAL REGISTER. Once a year, the PRB Chairman appoints performance review panels from the membership to review individual performance appraisals and other relevant information pertaining to Senior Executives at the Commission, and to recommend final performance ratings to the Chairman. C.O. No. 115.

(4) The Incentive Awards Committee is composed of two permanent voting members: The Director of Personnel, who serves as Chairman; and the Director of Equal Employment Opportunity; and two other voting members approved by the Chairman upon the recommendation of the Managing Director. The committee meets on an ad hoc basis to determine if incentive award nominations meet established criteria, and to review suggestions. C.O. No. 62.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 54396, Oct. 31, 1994; 59 FR 62329, Dec. 5, 1994; 59 FR 67227, Dec. 29, 1994; 60 FR 5322, Jan. 27, 1995; 60 FR 30791, June 12, 1995; 60 FR 57941, Nov. 24, 1995; 61 FR 51231, Oct. 1, 1996]

Subpart B—Official Seal

§ 501.11 Official seal.

(a) *Description*. Pursuant to section 201 (c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Commission prescribes its official seal, as adopted by the Commission on August 14, 1961, which shall be judicially noticed. The design of the official seal is described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription ''Federal Maritime Commission'' in upper portion and ''1961'' in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date ''1961'' has historical significance, indicating the year in which the Commission was created.

(b) *Design*.

Subpart C—Delegation and Redelegation of Authorities

§ 501.21 Delegation of authorities.

(a) *Authority and delegation.* Section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, authorizes the Commission to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter. In subpart A of this part, the Commission has delegated general functions, and in this subpart C, it is delegating miscellaneous, specific authorities set forth in §§ 501.23, et seq., to the delegatees designated therein, subject to the limitations prescribed in subsequent subsections of this section.

(b) *Deputies.* Where bureau or office deputies are officially appointed, they are hereby delegated all necessary authority to act in the absence or incapacity of the director or chief.

(c) *Redelegation.* Subject to the limitations in this section, the delegatees may redelegate their authorities to subordinate personnel under their supervision and direction; but only if this subpart is amended to reflect such redelegation and notice thereof is published in the FEDERAL REGISTER. Under any redelegated authority, the redelegator assumes full responsibility for actions taken by subordinate redelegatees.

(d) *Exercise of authority; policy and procedure.* The delegatees and redelegatees shall exercise the authorities delegated or redelegated in a manner consistent with applicable laws and the established policies of the Commission, and shall consult with the General Counsel where appropriate.

(e) *Exercise of delegated authority by delegator.* Under any authority delegated or redelegated, the delegator (Commission), or the redelegator, respectively, shall retain full rights to exercise the authority in the first instance.

(f) *Review of delegatee's action.* The delegator (Commission) or redelegator of authority shall retain a discretionary right to review an action taken under delegated authority by a subordinate delegatee, either upon the filing of a written petition of a party to, or an intervenor in, such action; or upon the delegator's or redelegator's own initiative.

(1) Petitions for review of actions taken under delegated authority shall be filed within ten (10) calendar days of the action taken:

(i) If the action for which review is sought is taken by a delegatee, the petition shall be addressed to the Commission pursuant to §502.69 of this chapter.

(ii) If the action for which review is sought is taken by a redelegatee, the petition shall be addressed to the redelegator whose decision can be further reviewed by the Commission under paragraph (f)(1)(i) of this section, unless the Commission decides to review the matter directly, such as, for example, in the incapacity of the redelegator.

(2) The vote of a majority of the Commission less one member thereof shall be sufficient to bring any delegated action before the Commission for review under this paragraph.

(g) *Action—when final.* Should the right to exercise discretionary review be declined or should no such review be sought under paragraph (f) of this section, then the action taken under delegated authority shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(h) *Conflicts.* Where the procedures set forth in this section conflict with law or any regulation of this chapter, the conflict shall be resolved in favor of the law or other regulation.

§501.22 [Reserved]

§501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel: Authority to classify carriers as state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a rebuttal statement pursuant to §514.4(c)(2)(ii) of this chapter.

[60 FR 27229, May 23, 1995]

§501.24 Delegation to the Secretary.

The authorities listed in this section are delegated to the Secretary (and, in the absence or preoccupation of the Secretary, to the Assistant Secretary).

(a) Authority to approve applications for permission to practice before the Commission and to issue admission certificates to approved applicants.

(b) Authority to extend the time to file exceptions or replies to exceptions, and the time for Commission review, relative to initial decisions of administrative law judges and decisions of Special Dockets Officers.

(c) Authority to extend the time to file appeals or replies to appeals, and the time for Commission review, relative to dismissals of proceedings, in whole or in part, issued by administrative law judges.

(d) Authority to establish and extend or reduce the time:

(1) To file documents either in docketed proceedings or relative to petitions filed under part 502 of this chapter, which are pending before the Commission itself; and

(2) To issue initial and final decisions under §502.61 of this chapter.

(e) Authority to prescribe a time limit less than twenty days from date published in the FEDERAL REGISTER, for the submission of written comments with reference to agreements filed pursuant to section 15 of the Shipping Act, 1916, and to prescribe a time limit for the submission of written comments with reference to agreements filed pursuant to section 5 of the Shipping Act of 1984.

(f) Authority, in appropriate cases, to publish in the FEDERAL REGISTER notices of intent to prepare an environmental assessment and notices of finding of no significant impact.

(g) Authority to prescribe a time limit less than ten days from date published in the FEDERAL REGISTER for filing comments on notices of intent to prepare an environmental assessment and notice of finding of no significant impact and authority to prepare environmental assessments of No Significant Impact.

(h) Authority, after consultation with the Director, Bureau of Economic and Agreement Analysis, to rule on requests to file amendments or supplements to documents concerning pending section 15 agreements, which are filed pursuant to §560.602(e) of this chapter.

(i) Authority, in the absence or preoccupation of the Managing Director and Deputy Managing Directors, to sign travel orders, nondocketed recommendations to the Commission, and

other routine documents for the Managing Director, consistent with the programs, policies, and precedents established by the Commission or the Managing Director.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 67227, Dec. 29, 1994]

§ 501.25 Delegation to and redelegation by the Managing Director.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Managing Director.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than $1,000.00, arising under the Military and Civilian Personnel Property Act of 1964, 31 U.S.C. 3721.

(b) Authority to determine that an exigency of the public business is of such importance that annual leave may not be used by employees to avoid forfeiture before annual leave may be restored under 5 U.S.C. 6304.

(c)(1) Authority under part 514 of this chapter, after consultation with the Bureau of Tariffs, Certification and Licensing, to issue letters notifying applicants for certification of ATFI batch filing capability that their applications have or have not been granted.

(2) The authority under this paragraph is redelegated to the Director, Office of Information Resources Management.

(d)(1) Authority under § 514.21(m)(2) of this chapter, after consultation with the Bureau of Tariffs, Certification and Licensing, to evaluate and approve or disapprove by letter the accounting or charging system the applicant intends to use for charging users and remitting to the Commission indirect (subsequent) access user fees under 46 U.S.C. app. 1107a(d)(1)(B)(ii), and by letter to deny access to ATFI data tapes for failure to operate under an approved accounting or charging system or for failure to remit user fees to the Commission.

(2) The authority under this paragraph is redelegated to the Director, Office of Information Resources Management.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 62330, Dec. 5, 1994]

§ 501.26 Delegation to the Director, Bureau of Economics and Agreement Analysis.

The authorities listed in this section are delegated to the Director, Bureau of Economics and Agreement Analysis.

(a) Authority to approve, pursuant to section 15 of the Shipping Act, 1916, unprotested passenger agency agreements and modifications thereto, and container interchange agreements and modifications thereto between common carriers by water.

(b) Authority to approve modifications to agreements filed under section 15 of the Shipping Act, 1916, when such modifications are filed in accordance with regulations and are clearly in compliance with the criteria and/or intent of such regulations, and require modification of the filed amendment to the extent necessary to conform to such regulations.

(c) Authority to approve those classes of unprotested section 15 agreements, and modifications thereto, which, pursuant to section 35 of the Shipping Act, 1916, are specifically exempted from the approval requirements of that Act, but which, notwithstanding the exemption, have been filed for approval.

(d) Authority to approve, pursuant to section 15 of the Shipping Act, 1916, as amended, unprotested modifications to marine terminal conference agreements and unprotested marine terminal leases, licenses, assignments, or other agreements of a similar character for the use of terminal property or facilities between persons subject to the Shipping Act, 1916, as amended. In instances where an agreement for the use of terminal property or facilities of that character defined herein grants renewal options without providing that the Commission be notified in the event that such options are exercised, this authority extends to the issuance of conditional approval, the condition of approval being that the agreement be modified to provide for notification to the Commission in the event that such options are exercised and refiled with the Commission.

(e) Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under

section 6(c)(1), and to shorten the review period under section 6(e), of the Shipping Act of 1984, when the agreement or modification involves solely a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes, for example, the following: a restatement filed to conform an agreement to the format and organization requirements of part 572 of this chapter; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement; or a transfer of functions from one person or committee to another.

(f) Authority to grant or deny applications filed under § 572.406 of this chapter for waiver of the form, organization and content requirements of §§ 572.401, 572.402, 572.403, 572.404 and 572.405 of this chapter.

(g) Authority to grant or deny applications filed under § 572.505 of this chapter for waiver of the information form requirements of §§ 572.503 and 572.504 of this chapter.

(h) Authority to grant or deny applications filed under § 572.709 of this chapter for waiver of the reporting and record retention requirements of §§ 572.701, 572.702, 572.703, 572.704, 572.705, 572.706, 572.707 and 572.708 of this chapter.

(i) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984 for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are not covered by this delegation include but are not limited to:

(1) New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

(2) New agreements authorizing the parties to pool cargoes or revenues.

(3) New agreements authorizing the parties to establish a joint service or consortium.

(4) New sailing agreements.

(5) New equal access agreements.

(j) Authority to grant or deny shortened review pursuant to § 572.605 of this chapter for agreements for which authority is delegated in paragraph (i) of this section.

(k) Subject to review by the General Counsel, authority to deny, but not approve, requests filed pursuant to § 572.605 of this chapter for a shortened review period for agreements for which authority is not delegated under paragraph (i) of this section.

(l) Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act, 1916, or the Shipping Act of 1984, after publication of notice of intent to terminate in the FEDERAL REGISTER, when such terminations are:

(1) Requested by the parties to the agreement;

(2) Deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or

(3) Deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

(m) Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of section 15 of the Shipping Act, 1916, or section 5 of the Shipping Act of 1984.

(n) Authority to request controlled carriers to file justifications for existing or proposed rates, charges classifications, rules or regulations, and review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule or regulation be found unlawful and, therefore, requires Commission action under section 9(d) of the Shipping Act of 1984.

(o) Authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to suspected violations of the shipping statutes and rules and regulations of the Commission.

(p) Authority to approve or disapprove applications as specified in Part 552 of this chapter for extensions of time for filing (§ 552.2(c)), alternative data (§ 552.2(d)) and waiver of detailed filing requirements (§ 552.2(e)).

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 54396, Oct. 31, 1994; 59 FR 67228, Dec. 29, 1994; 61 FR 9944, Mar. 12, 1996; 61 FR 14032, Mar. 29, 1996]

§ 501.27 Delegation to and redelegation by the Director, Bureau of Tariffs, Certification and Licensing.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Director, Bureau of Tariffs, Certification and Licensing.

(a)(1) Authority to approve for good cause or disapprove special permission applications submitted by common carriers, or conferences of such carriers, subject to the provisions of section 8 of the Shipping Act, 1984, section 18 of the Shipping Act, 1916, or section 2 of the Intercoastal Shipping Act of 1933, for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs, in the Bureau of Tariffs, Certification and Licensing.

(b)(1) Authority to approve or disapprove special permission applications submitted by a controlled carrier subject to the provisions of section 9 of the Shipping Act of 1984 for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs, in the Bureau of Tariffs, Certification and Licensing.

(c)(1) Authority contained in Supplemental Report No. 4 and Order in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce—Tariffs and Service Contracts, to grant special permission to deviate from the requirement that electronically-filed tariffs become effective no later than 90 days from the last day of the applicable filing window.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs, in the Bureau of Tariffs, Certification and Licensing.

(d) Authority contained in Part 514 of this chapter to temporarily exempt common carriers from the electronic tariff filing requirements of that part for a period not to exceed 90 days from the filing dates set forth in Supplemental Report No. 4 and Order, served in Docket No. 90–23 on May 28, 1993.

(e)(1) Authority to reject tariff filings of common carriers in the foreign and domestic offshore commerce of the U.S. or conferences of such carriers for failure to meet the requirements of pertinent statutes or the Commission's regulations, for lack of completeness or clarity, or for noncompliance with special permission or other orders of the Commission.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs; Chief, Tariff Control Center and Senior Transportation Specialists in the Bureau of Tariffs, Certification and Licensing.

(f) Authority to issue notices of intent to cancel inactive tariffs of common carriers in the foreign and domestic offshore commerce and marine terminal operators, after a diligent effort has been made to locate the carrier/terminal operator without success, or if the carrier/terminal operator has advised the Commission that it no longer offers a carrier/terminal operator service but refuses to cancel its tariff upon written request; and to cancel such tariff if, within 30 days after publication, the carrier/terminal operator does not furnish reasons why such tariff should not be canceled.

(g)(1) Authority to:

(i) Approve or disapprove applications for ocean freight forwarder licenses; issue or reissue or transfer such licenses; and approve extensions of time in which to furnish the name(s) and ocean freight forwarding experience of the managing partner(s) or officer(s) who will replace the qualified partner or officer upon whose qualifications the original licensing was approved;

(ii) Issue a letter stating that the Commission intends to deny an application, unless within 20 days, applicant requests a hearing to show that denial of the application is unwarranted; deny applications where an applicant has received such a letter and has not requested a hearing within the notice period; and rescind, or grant extensions of, the time specified in such letters;

(iii) Revoke the license of an ocean freight forwarder upon the request of the licensee;

(iv) Upon receipt of notice of cancellation of any bond, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the bond cancellation date, unless a new or reinstated bond is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain a bond;

(v) Approve changes in an existing licensee's organization; and

(vi) Return any application which on its face fails to meet the requirements of the Commission's regulations, accompanied by an explanation of the reasons for rejection.

(2) The authorities contained in paragraphs (g)(1)(iii) and (g)(1)(iv) of this section are redelegated to the Chief, Office of Freight Forwarders, in the Bureau of Tariffs, Certification and Licensing.

(h) Authority to:

(1) Approve applications for Certificates (Performance) and Certificates (Casualty) evidenced by a surety, insurance or guaranty issued by an approved entity, and issue, reissue, or amend such Certificates;

(2) Issue a written notice to an applicant stating intent to deny an application for a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; deny any application where the applicant has not submitted a timely request for a hearing; and rescind such notices and grant extensions of the time within which a request for hearing may be filed;

(3) Issue a written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; revoke, suspend or modify a Certificate (Performance) and/or (Casualty) where the certificant has not submitted a timely request for hearing; and rescind such notices and grant extensions of time within which a request for hearing may be filed;

(4) Revoke a Certificate (Performance) and/or (Casualty) which has expired, and/or upon request of, or acquiescence by, the certificant; and

(5) Notify a certificant when a Certificate (Performance) and/or (Casualty) has become null and void in accordance with §§ 540.8(a) and 540.26(a) of this chapter.

(i) Authority contained in § 514.7(j) of this chapter to notify filing parties of the Commission's intent to reject a service contract and/or statement of essential terms and subsequently reject and return such contracts.

(j) Authority contained in part 514 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

(k) Authority contained in parts 514 and 583 of this chapter to cancel the tariffs of NVOCCs who fail to file a surety bond, guaranty or insurance policy or, if required, designate an agent for receipt of process, or whose surety bond or agent designation is canceled.

(l) Authority contained in Parts 514 and 582 of this chapter to cancel the tariff or tariffs of any common carrier, and suspend the license of any ocean freight forwarder, who fails to file an anti-rebate certification.

(m) Authority to approve or disapprove applications as specified in Part 552 of this chapter for extensions of time for filing (§ 552.2(c)), alternative data (§ 552.2(d)) and waiver of detailed filing requirements (§ 552.2(e)).

(n) Authority contained in § 514.8(d)(4)(ii) of this chapter to approve minor changes and additions to transaction set data for the ATFI system. Such minor changes include additions to any of the following term and reference lists: Cities; States and Provinces; Countries; Ports; Container

sizes; Container types; Container temperatures; Hazard codes; Inland modes, Packaging types, Rate bases; Service types; Stuffing mode; Stripping mode; and Currencies.

(o) [Reserved]

(p) Authority to review and determine the validity of alleged or suspected violations, exclusive of formal complaints, of the shipping statutes and rules and regulations of the Commission by freight forwarders; authority to determine corrective action necessary with respect to violations except where violations involve major questions of policy or major interpretations of statutes, or orders, rules, and regulations of the Commission, or acts having material effect upon the commerce of the U.S.; and authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to such alleged or suspected violations.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 54396, Oct. 31, 1994; 60 FR 27229, May 23, 1995; 60 FR 27698, May 25, 1995]

§ 501.28 Delegation to the Director, Bureau of Enforcement.

The authorities listed in this section are delegated to the Director, Bureau of Enforcement. Notwithstanding the provisions of § 501.21, the Director may delegate or redelegate, in writing, specific authority to individuals within the Bureau of Enforcement other than the Deputy Director.

(a) Authority to compromise civil penalty claims has been delegated to the Director, Bureau of Enforcement, by § 502.604(g) of this chapter. This delegation shall include the authority to compromise issues relating to the retention, suspension or revocation of ocean freight forwarder licenses. See also §§ 501.5(i) and 501.21.

(b) Authority to approve administrative leave for Area Representatives.

[60 FR 57941, Nov. 24, 1995, as amended at 61 FR 51231, Oct. 1, 1996]

§ 501.29 [Reserved]

§ 501.30 Delegation to and redelegation by Director, Bureau of Administration.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Director, Bureau of Administration, and, in the absence or preoccupation of the Director, to the Deputy Director of that Bureau.

(a)(1) Authority is delegated to the Director, Bureau of Administration, to approve, certify, or otherwise authorize those actions dealing with appropriations of funds made available to the Commission including allotments, fiscal matters, and contracts relating to the operation of the Commission within the laws, rules, and regulations set forth by the Federal Government.

(2) The authority under this paragraph is redelegated to the Director, Office of Budget and Financial Management.

(b)(1) Authority is delegated to the Director, Bureau of Administration, to classify all positions GS–1 through GS–15 and wage grade positions.

(2) The authority under this paragraph is redelegated to the Director, Office of Personnel.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 44641, Aug. 30, 1994. Redesignated and amended at 59 FR 62330, Dec. 5, 1994]

Subpart D—Public Requests for Information

§ 501.41 Public requests for information and decisions.

(a) General. Pursuant to 5 U.S.C. 552(a)(1)(A), there is hereby stated and published for the guidance of the public the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, principally by contacting by telephone, in writing, or in person, either the Secretary of the Commission at the Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, or the Area Representatives listed in paragraph (d) of this section. See also part 503 of this chapter.

(b) The Secretary will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of the Secretary and of the Commission, generally. Unless otherwise provided in this chapter, any document, report, or other submission required to be filed

with the Commission by statute or the Commission's rules and regulations relating to the functions of the Commission or of the Office of the Secretary shall be filed with or submitted to the Secretary.

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

(1) Office of the General Counsel;

(2) Office of the Administrative Law Judges;

(3) Office of the Managing Director;

(4) Office of the Inspector General ;

(5) Office of Equal Employment Opportunity;

(6) Bureau of Enforcement;

(7) Bureau of Economics and Agreement Analysis;

(8) Bureau of Tariffs, Certification and Licensing;

(9) [Reserved];

(10) Bureau of Administration;

(11) Office of Personnel;

(12) Office of Budget and Financial Management;

(13) Office of Information Resources Management;

(14) Office of Administrative Services; and

(15) Office of Informal Inquiries, Complaints and Informal Dockets.

(d) The Area Representatives will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters. The addresses of these Area Representatives are as follows. Further information on Area Representatives, including Internet E-mail addresses, can be obtained on the Commission's home page on the World Wide Web at ''www.fmc.gov.''

Los Angeles

Los Angeles Area Representative, U.S. Customs House Building, P.O. Box 3164, 300 S. Ferry Street, Room 1018, Terminal Island Station, San Pedro, CA 90731

Miami

Miami Area Representative, Customs Management Center, 909 SE, 1st Ave., Room 736, Miami, FL 33131

New Orleans

New Orleans Area Representative, U.S. Customs House, 423 Canal Street, Room 303, New Orleans, LA 70130

Seattle

Seattle Area Representative, U.S. Customs, 3236 16th Ave., SW, Seattle, WA 98134

North Atlantic

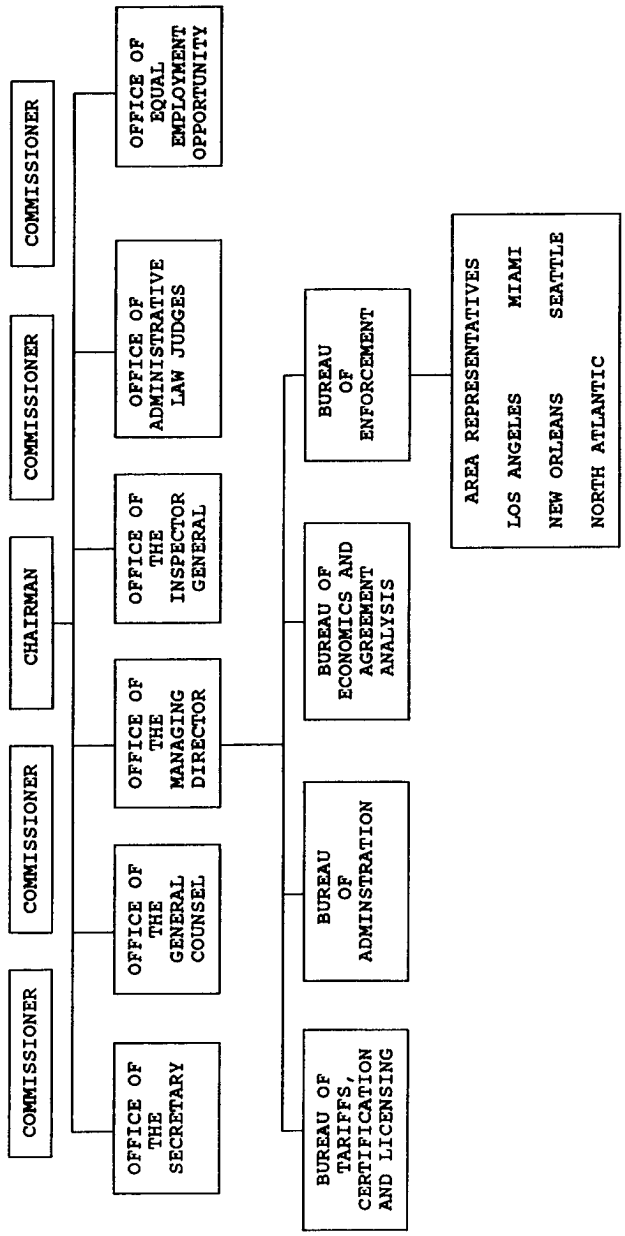
North Atlantic Area Representative, Federal Maritime Commission, 800 North Capitol Street, NW., Suite 928, Washington, DC 20573

(e) Any document, report or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the specific functions of the bureaus and offices shall be filed with or submitted to the Director of such Bureau or Office.

[59 FR 954, Jan. 7, 1994, as amended at 59 FR 67228, Dec. 29, 1994; 60 FR 57941, Nov. 24, 1995; 61 FR 51231, Oct. 1, 1996]

APPENDIX A

FEDERAL MARITIME COMMISSION
ORGANIZATION CHART



[61 FR 51232, Oct. 1, 1996]

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AUTHORITY: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

SOURCE: 49 FR 44369, Nov. 6, 1984, unless otherwise noted.

Subpart A—General Information

§502.1 Scope of rules in this part.

The rules in this part govern procedure before the Federal Maritime Commission, hereinafter referred to as the *Commission*, under the Shipping Act, 1916, Merchant Marine Act, 1920, Intercoastal Shipping Act, 1933, Merchant Marine Act, 1936, Shipping Act of 1984, Administrative Procedure Act, and related acts, except that subpart R of this part does not apply to proceedings subject to sections 7 and 8 of the Administrative Procedure Act, which are to be governed only by subparts A to Q inclusive, of this part. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. [Rule 1.] To this end, all

persons involved in proceedings conducted under the rules of this part shall be required to consider at an early stage of the proceeding whether resort to alternative dispute resolution techniques would be appropriate or useful.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993]

§ 502.2 Filing of documents; hours; mailing address.

(a) For purposes of filing of documents with the Commission, the hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive.

(b) Except for exhibits filed pursuant to § 502.118(b)(4) and petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to *Secretary, Federal Maritime Commission, Washington, DC 20573–0001.* Petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a) shall be addressed to *General Counsel, Office of the General Counsel, Federal Maritime Commission, Washington, DC 20573–0001.*

(c) Documents relating to any matter pending before the Commissioners for decision or to any matter pending before the Commission which is likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this part, shall similarly be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(d) No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See § 503.82(e) of this chapter.) [Rule 2.]

[52 FR 27002, July 17, 1987, as amended at 53 FR 13270, Apr. 22, 1988]

§ 502.3 Compliance with rules or orders of Commission.

Persons named in a rule or order shall notify the Commission during business hours on or before the day on which such rule or order becomes effective whether they have complied therewith, and if so, the manner in which compliance has been made. If a change in rates is required, the notification shall specify the tariffs which effect the changes. [Rule 3.]

§ 502.4 Authentication of rules or orders of Commission.

All rules or orders issued by the Commission in any proceeding covered by this part shall, unless otherwise specifically provided, be signed and authenticated by seal by the Secretary of the Commission in the name of the Commission. [Rule 4.]

§§ 502.5—502.6 [Reserved]

§ 502.7 Documents in foreign languages.

Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, shall be filed or offered in the language in which it is written and shall be accompanied by an English translation thereof duly verified under oath to be an accurate translation. [Rule 7.]

§ 502.8 Denial of applications and notice thereof.

Except in affirming a prior denial or where the denial is self-explanatory, prompt written notice will be given of the denial in whole or in part of any written application, petition, or other request made in connection with any

proceeding under this part, such notice to be accompanied by a simple statement of procedural or other grounds for the denial, and of any other or further administrative remedies or recourse applicant may have where the denial is based on procedural grounds. [Rule 8.]

§502.9 Suspension, amendment, etc., of rules in this part.

The rules in this part may, from time to time, be suspended, amended, or revoked, in whole or in part. Notice of any such action will be published in the FEDERAL REGISTER. [Rule 9.]

§502.10 Waiver of rules in this part.

Except to the extent that such waiver would be inconsistent with any statute, any of the rules in this part, except §§502.11 and 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires. [Rule 10.]

§502.11 Disposition of improperly filed documents and ex parte communications.

(a) *Documents not conforming to rules.* Any pleading, document, writing or other paper submitted for filing which is rejected because it does not conform to the rules in this part shall be returned to the sender;

(b) *Ex parte communications.* (1) No person who is a party to or an agent of a party to any proceeding as defined in §502.61 or who directly participates in any such proceeding and no interested person outside the Commission shall make or knowingly cause to be made to any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any such proceeding, an ex parte communication relevant to the merits of the proceeding;

(2) No Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any agency proceeding, shall make or knowingly cause to be made to any interested persons outside the Commission or to any party to the proceeding or its agent or to any direct participant in a proceeding, an ex parte communication relevant to the merits of the proceeding. This prohibition shall not be construed to prevent any action authorized by paragraphs (b) (5), (6) and (7) of this section;

(3) ''Ex parte communication'' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or communications regarding purely procedural matters or matters which the Commission or member thereof, administrative law judge, or Commission employee is authorized by law or these rules to dispose of on an ex parte basis;

(4) Any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any proceeding who receives, or who makes or knowingly causes to be made, an ex parte communication shall promptly transmit to the Secretary of the Commission:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses and memoranda stating the substance of all oral responses to the materials described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section;

(5) The Secretary shall place the materials described in paragraph (b)(4) of this section in the correspondence part of the public docket of the proceeding and may take such other action as may be appropriate under the circumstances;

(6) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party to a proceeding, the Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the making of such communication;

(7) An ex parte communication shall not constitute a part of the record for

decision. The Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly caused such violation to occur and may take such other action as may be appropriate under the circumstances. [Rule 11.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.12 Applicability of Federal Rules of Civil Procedure.

In proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice.

[58 FR 27210, May 7, 1993]

Subpart B—Appearance and Practice Before the Commission

§ 502.21 Appearance.

(a) *Parties.* A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. Any party or his or her representative may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

(b) *Persons not parties.* One who appears in person before the Commission or a representative thereof, either by compulsion from, or request or permission of the Commission, shall be accorded the right to be accompanied, represented, and advised by counsel.

(c) *Special requirement.* An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. If a person desires to appear specially, he or she must expressly so state when entering the appearance and, at that time, shall also state the questions or issues to which he or she is confining the appearance; otherwise his or her appearance will be considered as general. [Rule 21.]

§ 502.22 Authority for representation.

Any individual acting in a representative capacity in any proceeding before the Commission may be required to show his or her authority to act in such capacity. [Rule 22.]

§ 502.23 Notice of appearance; written appearance; substitutions.

(a) Within twenty (20) days after service of an order or complaint instituting a proceeding, complainants, respondents, and/or petitioners named therein shall notify the Commission of the name(s) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted. If an attorney or other representative of record is superseded, there shall be filed a stipulation of substitution signed both by the attorney(s) or representative(s) and by the party, or a written notice from the client to the Commission.

(b) A form of Notice of Appearance is set forth in Exhibit No. 1 to this subpart. This form also contains a request and authorization for counsel to be notified immediately of the service of decisions of the presiding officer and the Commission by collect telephone call or telegram. Copies of this form may be obtained from the Office of the Secretary. [Rule 23.]

§ 502.24 Practice before the Commission defined.

(a) Practice before the Commission shall be deemed to comprehend all matters connected with the presentation of any matter to the Commission, including the preparation and filing of necessary documents, and correspondence with and communications to the Commission, on one's own behalf or representing another. (See § 502.32).

(b) The term ''Commission'' as used in this subpart includes any bureau, division, office, branch, section, unit, or field office of the Federal Maritime Commission and any officer or employee of such bureau, division, office, branch, section, unit, or field office. [Rule 24.]

§502.25 Presiding officer defined.

''Presiding officer'' means and shall include (a) any one or more of the members of the Commission (not including the Commission when sitting as such), (b) one or more administrative law judges or (c) one or more officers authorized by the Commission to conduct nonadjudicatory proceedings when duly designated to preside at such proceedings. (See subpart J of this part.) [Rule 25.]

§502.26 Attorneys at law.

Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or Territory of the United States may practice before the Commission. An attorney's own representation that he is such in good standing before any of the courts herein referred to will be sufficient proof thereof, if made in writing and filed with the Secretary. [Rule 26.]

§502.27 Persons not attorneys at law.

(a)(1) Any person who is not an attorney at law may be admitted to practice before the Commission if he or she is a citizen of the United States and files proof to the satisfaction of the Commission that he or she possesses the necessary legal, technical, or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the presentation of matters before the Commission. Applications by persons not attorneys at law for admission to practice before the Commission shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Commission, and shall be addressed to the Federal Maritime Commission, Washington, DC, 20573, and shall be accompanied by a fee as required by §503.43(h) of this chapter.

(2) All applicants must complete the following certification:

I. _____ (Name _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to practice before the Commission.

(c) Paragraph (b) of this section and the provisions of §§502.29 and 502.30 shall not apply, however, to any person who appears before the Commission on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee. [Rule 27.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 42194, Oct. 18, 1990; 58 FR 58976, Nov. 5, 1993]

§502.29 Hearings.

The Commission, in its discretion, may call upon the applicant for a full statement of the nature and extent of his or her qualifications. If the Commission is not satisfied as to the sufficiency of the applicant's qualifications, it will so notify him or her by registered mail, whereupon he or she shall be granted a hearing upon request for the purpose of showing his or her qualifications. If the applicant presents to the Commission no request for such hearing within twenty (20) days after receiving the notification above referred to, his or her application shall be acted upon without further notice. [Rule 29.]

§502.30 Suspension or disbarment.

The Commission may deny admission to, suspend, or disbar any person from practice before the Commission who it finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper professional conduct. Any person who has been admitted to practice before the Commission may be disbarred from such practice only after being afforded an opportunity to be heard. [Rule 30.]

§ 502.31 Statement of interest.

The Commission may call upon any practitioner for a full statement of the nature and extent of his or her interest in the subject matter presented by him or her before the Commission. [Rule 31.]

§ 502.32 Former employees.

Title V of the Ethics in Government Act proscribes certain activities by certain former Federal employees (18 U.S.C. 207). In summary, as applied to former Commission employees, the restrictions and basic procedures are as follows:

(a) *Restrictions.* (1) No former Commission employee may represent in any formal or informal appearance or make any oral or written communication with intent to influence a U.S. Government agency in a particular matter involving a specific party or parties in which the employee participated personally and substantially while with the Commission.

(2) No former Commission employee may, within two years of terminating Commission employment, act as a representative in the manner described in paragraph (a)(1) of this section, as to a particular matter which was actually pending under the employee's official responsibility within one year prior to termination of the employment.

(3) Former senior Commission employees (defined as Commissioners and members of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1)) may not, for two years after terminating Commission employment, assist in representing a person by personal presence at an appearance before the Government on a matter in which the former employee had participated personally and substantially while at the Commission.

(4) Former senior Commission employees, as defined in paragraph (a)(3) of this section, are barred for one year from representing parties before the Commission or communicating with intent to influence the Commission, regardless of prior involvement in the particular proceeding.

(b) *Prior consent for appearance.* (1) Prior to making any appearance, representation or communication described in paragraph (a) of this section, and, in addition to other requirements of this subpart, every former employee must apply for and obtain prior written consent of the Commission for each proceeding or matter in which such appearance, representation, or communication is contemplated. Such consent will be given only if the Commission determines that the appearance, representation or communication is not prohibited by the Act, this section or other provisions of this chapter.

(2) To facilitate the Commission's determination that the intended activity is not prohibited, applications for written consent shall:

(i) Be directed to the Commission, state the former connection of the applicant with the Commission and date of termination of employment, and identify the matter in which the applicant desires to appear; and

(ii) Be accompanied by an affidavit to the effect that the matter for which consent is requested is not a matter in which the applicant participated personally and substantially while at the Commission and, as made applicable by paragraph (a) of this section, that the particular matter as to which consent is requested was not pending under the applicant's official responsibility within one year prior to termination of employment and that the matter was not one in which the former employee had participated personally and substantially while at the Commission. The statements contained in the affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(3) The applicant shall be promptly advised as to his or her privilege to appear, represent or communicate in the particular matter, and the application, affidavit and consent, or refusal to consent, shall be filed by the Commission in its records relative thereto.

(c) *Basic procedures for possible violations.* The following basic guidelines for administrative enforcement restrictions on post employment activities are designed to expedite consultation with the Director of the Office of Government Ethics as required pursuant to section 207(j) of Title 18, United States Code.

(1) *Delegation.* The Chairman may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(ii) Whenever the Commission has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated any provision of paragraph (a) of this section or 18 U.S.C. 207 (a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (c)(3) of this section.

(3) *Adequate notice.* (i) The Commission shall provide a former Commission employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Commission employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Commission employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at a proceeding under this section shall be an individual to whom the Chairman has delegated authority to make an initial decision (hereinafter referred to as ''examiner'').

(ii) The examiner must be a Commissioner (other than the Chairman), an administrative law judge, or an attorney employed by the Commission and shall be provided with appropriate administrative and secretarial support by the Commission.

(iii) The presiding official shall be impartial. No individual who has participated in any manner in the decision to initiate a proceeding may serve as an examiner in that proceeding.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Commission employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel;

(ii) To introduce and examine witnesses and to submit physical evidence;

(iii) To confront and cross-examine adverse witnesses;

(iv) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the Commission has the burden of proof and must establish substantial evidence of a violation.

(8) *Initial decision.* (i) The examiner shall make a determination on matters exclusively of record in a proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the Commission, either party may appeal the decision solely on the record to the Chairman. The Chairman shall base his or her decision solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the Chairman modifies or reverses the initial decision, he or she shall specify such findings of facts and conclusions of law as are different from those of the examiner.

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a),

(b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years, which may be accomplished by directing Commission employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section may seek judicial review of the administrative determination.

(11) *Consultation and review.* The procedures for administrative enforcement set forth in paragraphs (a), (b), and (c) of this section have been reviewed by the Director of the Office of Government Ethics.

(d) *Partners or associates.* (1) In any case in which a former member, officer, or employee of the Commission is prohibited under this section from practicing, appearing, or representing anyone before the Commission in a particular Commission matter, any partner or legal or business associate of such former member, officer, or employee shall be prohibited from (i) utilizing the services of the disqualified former member, officer, or employee in connection with the matter, (ii) discussing the matter in any manner with the disqualified former member, officer, or employee, and (iii) sharing directly or indirectly with the disqualified former member, officer, or employee in any fees or revenues received for services rendered in connection with such matter.

(2) The Commission may require any practitioner or applicant to become a practitioner to file an affidavit to the effect that the practitioner or applicant will not: (i) Utilize the service of, (ii) discuss the particular matter with, or (iii) share directly or indirectly any fees or revenues received for services provided in the particular matter, with a partner, fellow employee, or legal or business associate who is a former member, officer or employee of the Commission and who is either permanently or temporarily precluded from practicing, appearing or representing anyone before the Commission in connection with the particular matter; and that the applicant's employment is not prohibited by any law of the United States or by the regulations of the Commission. [Rule 32.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

EXHIBIT NO. 1 TO SUBPART B [§§ 502.23, 502.26, 502.27]

NOTICE OF APPEARANCE

Federal Maritime Commission

Notice of Appearance

Docket No. ———:

Please enter my appearance in this proceeding as counsel for:

☐ I request to be informed by telephone or telegram of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding. In the event I am not available when you call, appropriate advice left with my office will suffice.

Washington area: I understand I will be informed by telephone.

Outside Washington area: I authorize

☐ collect telephone call

☐ collect telegram

☐ I do not desire the above notice.

[Name]

[Address]

[Telephone No.]

NOTE: Must be signed by attorney at law admitted to practice before the Federal Courts or before the courts of any State or Territory of the United States or by a person not an attorney at law who has been admitted to practice before the Commission or by a person appearing on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee.

Subpart C—Parties

§502.41 Parties; how designated.

The term ''party'', whenever used in the rules in this part, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action under §502.62 shall be designated as ''complainant''. A party against whom relief or other affirmative action is sought in any proceeding commenced under §502.62, §502.66, or §502.67, or a party named in an order of investigation issued by the Commission, shall be designated as ''respondent,'' except that in investigations instituted under section 15 of the Shipping Act, 1916 or section 11(c) of the Shipping Act of 1984, the parties to the agreement shall be designated as ''proponents'' and the parties protesting the agreement shall be designated as ''protestants''. A person who has been permitted to intervene under §502.72 shall be designated as ''intervenor''. All persons or parties designated in this section shall become parties to the proceeding involved without further pleadings, and no person other than a party or its representative may introduce evidence or examine witnesses at hearings. [Rule 41.]

§502.42 Bureau of Enforcement.

The Director, Bureau of Enforcement, shall be a party to all proceedings governed by the rules in this part, except that in complaint proceedings under §502.62, the Director may become a party only upon leave to intervene granted pursuant to §502.72, and in rulemaking proceedings, the Director may become a party by designation, if the Commission determines that the circumstances of the proceeding warrant such participation. The Director or the Director's representative shall be served with copies of all papers, pleadings, and documents in every proceeding in which the Bureau of Enforcement is a party. The Bureau of Enforcement shall actively participate in any proceeding to which the Director is a party, to the extent required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act. (See §502.224.) [Rule 42.]

[61 FR 51233, Oct. 1, 1996]

§502.43 Substitution of parties.

In appropriate circumstances, the Commission or presiding officer may order an appropriate substitution of parties. [Rule 43.]

§502.44 Necessary and proper parties in certain complaint proceedings.

(a) If a complaint relates to through transportation by continuous carriage or transshipment, all carriers participating in such through transportation shall be joined as respondents.

(b) If the complaint relates to more than one carrier or other person subject to the shipping acts, all carriers or other persons against whom a rule or order is sought shall be made respondents.

(c) If complaint is made with respect to an agreement filed under section 15 of the Shipping Act, 1916 or section 5(a) of the Shipping Act of 1984, the parties to the agreement shall be made respondents. [Rule 44.]

Subpart D—Rulemaking

§502.51 Petition for issuance, amendment, or repeal of rule.

Any interested party may file with the Commission a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Commission. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be verified. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in other aspects to subpart H of this part. Petitions shall be accompanied by remittance of a $50 filing fee. Replies to such petition shall conform to the requirements of §502.74. [Rule 51.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990]

§ 502.52 Notice of proposed rulemaking.

(a) General notice of proposed rulemaking, including the information specified in § 502.143, shall be published in the FEDERAL REGISTER, unless all persons subject thereto are named and, either are personally served, or otherwise have actual notice thereof in accordance with law.

(b) Except where notice of hearing is required by statute, this section shall not apply to interpretative rules, general statements of policy, organization rules, procedure, or practice of the Commission, or any situation in which the Commission for good cause finds (and incorporates such findings in such rule) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. [Rule 52.]

§ 502.53 Participation in rulemaking.

(a) Interested persons will be afforded an opportunity to participate in rulemaking through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner. No replies to the written submissions will be allowed unless, because of the nature of the proceeding, the Commission indicates that replies would be necessary or desirable for the formulation of a just and reasonable rule, except that, where the proposed rules are such as are required by statute to be made on the record after opportunity for a hearing, such hearing shall be conducted pursuant to 5 U.S.C. 556 and 557, and the procedure shall be the same as stated in subpart J of this part. In the event that replies or succeeding rounds of comments are permitted, copies shall be served on all prior participants in the proceeding. A list of participants may be obtained from the Secretary of the Commission.

(b) In those proceedings in which respondents are named, interested persons who wish to participate shall file a petition to intervene in accordance with the provisions of § 502.72 [Rule 53.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990]

§ 502.54 Contents of rules.

The Commission will incorporate in any rules adopted a concise general statement of their basis and purpose. [Rule 54.]

§ 502.55 Effective date of rules.

The publication or service of any substantive rule shall be made not less than thirty (30) days prior to its effective date except (a) as otherwise provided by the Commission for good cause found and published in the FEDERAL REGISTER or (b) in the case of rules granting or recognizing exemption or relieving restriction; interpretative rules; or statements of policy. [Rule 55.]

§ 502.56 Negotiated rulemaking.

The Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule, if, upon consideration of the criteria of 5 U.S.C. 563, use of such a committee is determined by the Commission to be in the public interest.

[58 FR 38649, July 19, 1993]

Subpart E—Proceedings; Pleadings; Motions; Replies

§ 502.61 Proceedings.

(a) Proceedings are commenced by the filing of a complaint, or by order of the Commission upon petition or upon its own motion, or by reference by the Commission to the formal docket of a petition for a declaratory order.

(b) In proceedings referred to the Office of Administrative Law Judges, the Commission shall specify a date on or before which hearing shall commence, which date shall be no more than six months from the date of publication in the FEDERAL REGISTER of the Commission's order instituting the proceedings or notice of complaint filed. Hearing dates may be deferred by the presiding judge only to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party.

(c) In the order instituting a proceeding or in the notice of filing of complaint and assignment, the Commission

shall establish dates by which the initial decision and the final Commission decision will be issued. These dates may be extended by order of the Commission for good cause shown. [Rule 61.]

(d) All orders instituting a proceeding or noticing the filing of a complaint will contain language requiring that prior to the commencement of oral hearings consideration shall be given by the parties and presiding officer to the use of alternative forms of dispute resolution, and further requiring that hearings shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993]

§502.62 Complaints and fee.

(a) The complaint must be verified and shall contain the name and address of each complainant, the name and address of each complainant's attorney or agent, the name and address of each person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought.

(b) Where reparation is sought and the nature of the proceeding so requires, the complaint shall set forth: the ports of origin and destination of the shipments; consignees, or real parties in interest, where shipments are on ''order'' bill of lading; consignors; date of receipt by carrier or tender of delivery to carrier; names of vessels; bill of lading number (and other identifying reference); description of commodities; weights; measurement; rates; charges made or collected; when, where, by whom and to whom rates and charges were paid; by whom the rates and charges were borne; the amount of damage; and the relief sought. Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically asked for, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding. Wherever a rate, fare, charge, rule, regulation, classification, or practice is involved, appropriate reference to the tariff should be made, if possible.

(c) If the complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary.

(d) The complaint should designate the place at which hearing is desired.

(e) A form of complaint is set forth in Exhibit No. 1 to this subpart.

(f) The complaint shall be accompanied by remittance of a $166 filing fee.

(g) For special types of cases, see §502.92 in subpart F (Special Docket applications for refund or waiver); subpart K (Shortened Procedure); and subpart S (Small Claims). [Rule 62.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990; 59 FR 59170, Nov. 16, 1994]

§502.63 Reparation; statute of limitations.

(a) Complaints seeking reparation pursuant to section 22 of the Shipping Act, 1916 shall be filed within two (2) years after the cause of action accrues.

(b) Complaints seeking reparation pursuant to section 11 of the Shipping Act of 1984 shall be filed within three years after the cause of action accrues.

(c) The Commission will consider as in substantial compliance with a statute of limitations a complaint in which complainant alleges that the matters complained of, if continued in the future, will constitute violations of the shipping acts in the particulars and to the extent indicated and in which complainant prays for reparation accordingly for injuries which may be sustained as a result of such violations. (See §§502.251–502.253 and Exhibit No. 1 to subpart O.)

(d) Notification to the Commission that a complaint may or will be filed for the recovery of reparation will not

constitute a filing within the applicable statutory period.

(e) A complaint is deemed filed on the date it is received by the Commission. [Rule 63.]

§ 502.64 Answer to complaint; counter-complaint.

(a) Respondent shall file with the Commission an answer to the complaint and shall serve it on complainant as provided in subpart H of this part within twenty (20) days after the date of service of the complaint by the Commission or within thirty (30) days if such respondent resides in Alaska or beyond the Continental United States, unless such periods have been extended under § 502.71 or § 502.102, or reduced under § 502.103, or unless motion is filed to withdraw or dismiss the complaint, in which latter case, answer shall be made within ten (10) days after service of an order denying such motion. Such answer shall give notice of issues controverted in fact or law. Recitals of material and relevant facts in a complaint, amended complaint, or bill of particulars, unless specifically denied in the answer thereto, shall be deemed admitted as true, but if request is seasonably made, a competent witness shall be made available for cross-examination on such evidence.

(b) In the event that respondent should fail to file and serve the answer within the time provided, the presiding officer may enter such rule or order as may be just, or may in any case require such proof as he or she may deem proper, except that the presiding officer may permit the filing of a delayed answer after the time for filing the answer has expired, for good cause shown.

(c) A form of answer to complaint is set forth in Exhibit No. 2 to this subpart. [Rule 64.]

(d) In addition to filing an answer to a complaint, respondent may file a counter-complaint alleging violations of the Shipping Acts within the jurisdiction of the Commission. The filing of counter-complaints and answers to counter-complaints is governed by the rules and requirements of § 502.62 (excluding fees) and of this section for the filing of complaints and answers. Counter-complaints may be served directly by the parties if authorized by the presiding officer.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27210, May 7, 1993]

§ 502.65 Replies to answers not permitted.

Replies to answers will not be permitted. New matters set forth in respondent's answer will be deemed to be controverted. [Rule 65.]

§ 502.66 Order to show cause.

The Commission may institute a proceeding by order to show cause. The order shall be served upon all persons named therein, shall include the information specified in § 502.143, may require the person named therein to answer, and shall require such person to appear at a specified time and place and present evidence upon the matters specified. [Rule 66.]

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

(a)(1)(i) The term *general rate increase* means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(ii) The term *general rate decrease* means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in tariffs per trade of any common carrier by water in the intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(2) No general rate increase or decrease shall take effect before the close of the sixtieth day after the day it is posted and filed with the Commission. A vessel operating common carrier (VOCC) shall file, under oath, concurrently with any general rate increase or decrease, testimony and exhibits of such composition, scope and format

that they will serve as the VOCC's entire direct case in the event the matter is set for formal investigation, together with all underlying workpapers used in the preparation of the testimony and exhibits. The VOCC shall also certify that copies of testimony and exhibits and underlying workpapers have been filed simultaneously with the attorney general of every noncontiguous State, Commonwealth, possession or Territory having ports in the relevant trade that are served by the VOCC. The contents of underlying workpapers served on attorneys general pursuant to this paragraph are to be considered confidential and are not to be disclosed to members of the public except to the extent specifically authorized by an order of the Commission or a presiding officer. A copy of the testimony and exhibits shall be made available at every port in the trade at the offices of the VOCC or its agent during usual business hours for inspection and copying by any person.

(3) Workpapers underlying financial and operating data filed in connection with proposed rate changes shall be made available promptly by the carrier to all persons requesting them for inspection and copying upon the submission of the following certification, under oath, to the carrier:

Certification

I, (Name and title if applicable) _____, of (Full name of company or entity) _____, having been duly sworn, certify that the underlying workpapers requested from (Name of carrier) _____, will be used solely in connection with protests related to and proceedings resulting from (Name of carrier) _____'s rates, fares or charges in the _____ trade and that their contents will not be disclosed to any person who has not signed, under oath, a certification in the form prescribed, which has been filed with the Carrier, unless public disclosure is specifically authorized by an order of the Commission or the presiding officer.

Signature: _____

Date: _____

Signed and Sworn to before me this ____ day of _____ (month), _____ (year).

Notary Public: _____

My Commission expires: _____

(4) Where a protest contains information obtained in confidence, it will be set out in a separate document, clearly marked on the cover page ''Contains Confidential Information.'' Failure to observe this procedure will subject the protest to rejection.

(5) Failure by the VOCC to meet the service and filing requirements of paragraph (a)(2) of this section may result in rejection of the tariff matter. Such rejection will take place within three work days after the defect is discovered.

(b)(1) Any protest against a proposed general rate increase or decrease made pursuant to section 3 of the Intercoastal Shipping Act, 1933, may be made by letter and shall be filed with the Director, Bureau of Tariffs, and served upon the tariff publishing officer of the carrier pursuant to subpart H of this part no later than thirty (30) days prior to the proposed changes, except that, if the due date for protests falls on a Saturday, Sunday or national legal holiday, such protest must be filed no later than the last business day preceding the weekend or holiday. Persons filing protests pursuant to this section shall be made parties to any docketed proceeding involving the matter protested, provided that the issues raised in the protest are pertinent to the issues set forth in the order of investigation. Protests shall include:

(i) Identification of the tariff in question;

(ii) Grounds for opposition to the change;

(iii) Identification of any specific areas of the VOCC's testimony, exhibits, or underlying data that are in dispute and a statement of position on each area in dispute (VOCC general rate increases or decreases only);

(iv) Specific reasons why a hearing is necessary to resolve the issues in dispute;

(v) Any requests for additional carrier data;

(vi) Identification of any witnesses that protestant would produce at a hearing, a summary of their testimony and identification of documents that protestant would offer in evidence; and

(vii) A subscription and verification.

(2) Protests against across-the-board increases, as defined in § 514.2 of this

chapter, and against other proposed changes in tariffs filed on at least thirty (30) days' notice, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. The provisions of paragraph (b)(1) of this section relating to the form and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against across-the-board increases and other proposed changes in tariffs filed on at least thirty (30) days' notice. A protest is deemed filed on the date it is received by the Commission.

(3) Protests against other proposed changes in tariffs filed on less than thirty (30) days' notice shall be filed and served not later than 9 a.m. on the last workday before the scheduled effective date of the change. any protest may be made by letter and shall be filed with the Director, Bureau of Tariffs, Certification and Licensing, and served upon the tariff publishing officer of the carrier in accordance with subpart H of this part. Such protest shall identify the tariff in question and the grounds for opposition to the change as well as the relief sought by the protestant. A protest is deemed filed on the date it is received by the Commission.

(c) Replies to protests shall conform to the requirements of § 502.74.

(d)(1) In the event the general rate increase or decrease of a VOCC is made subject to a docketed proceeding:

(i) The VOCC shall serve, under oath, testimony and exhibits constituting its direct case, together with underlying workpapers and responses (including objections, if any) to protestants' requests for additional carrier data, on all parties pursuant to subpart H of this part, and lodge copies of such testimony and exhibits with the presiding officer, no later than seven (7) days after the Commission issues its order of investigation in the docketed proceeding; and

(ii) Hearing Counsel and all Protestants shall serve, under oath, testimony and exhibits constituting their direct cases on all parties pursuant to subpart H of this part, and lodge copies with the presiding officer, no later than fourteen (14) days after the Commission issues its order of investigation in the docketed proceeding.

(2) If other proposed tariff changes are made subject to a docketed proceeding pursuant to section 3 of the Intercoastal Shipping Act, 1933, the carrier shall serve, under oath, testimony and exhibits constituting its direct case, together with underlying workpapers, on all parties pursuant to subpart H of this part, and lodge copies of such testimony and exhibits with the presiding officer, no later than fourteen (14) days after the Commission issues its order of investigation. Further procedural dates in such proceeding shall be established by the presiding officer.

(e)(1) Subsequent to the issuance of an order of investigation, the presiding officer may direct all parties to participate in a prehearing conference to consider:

(i) Simplification of issues;

(ii) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(iii) Identification of any issues which require evidentiary hearing;

(iv) Limitation of witnesses and areas of cross-examination, should an evidentiary hearing be necessary;

(v) Requests for subpoenas; and

(vi) Other matters which may aid in the disposition of the hearing, including but not limited to the exchange of written testimony and exhibits.

(2) After considering the procedural recommendations of the parties, the presiding officer shall limit the issues to the extent possible and establish a procedure for their resolution.

(3) The presiding officer shall, whenever feasible, rule orally upon the record on matters presented before him or her.

(f)(1) It shall be the duty of every party to file and serve a prehearing statement on a date specified by the presiding officer, but in any event no later than the date of the prehearing conference.

(2) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth:

(i) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(ii) Identification of any issues which require evidentiary hearing, together with the reasons why these issues cannot be resolved readily on the basis of documents, admissions of facts, stipulations or an alternative procedure;

(iii) Requests for cross-examination of the direct written testimony of specified witnesses, the subjects of such cross-examination and the reasons why alternatives to cross-examination are not feasible;

(iv) Requests for additional, specified witnesses and documents, together with the reasons why the record would be deficient in the absence of this evidence; and

(v) Procedural suggestions that would aid in the timely disposition of the proceeding.

(g) The provisions of this section are designed to enable the presiding officer to complete a hearing within sixty (60) days after the proposed effective date of the tariff changes and submit an initial decision to the Commission within one hundred twenty (120) days pursuant to section 3(b) of the Intercoastal Shipping Act, 1933. The presiding officer may employ any other provision of the Commission's Rules of Practice and Procedure, not inconsistent with this section, in order to meet this objective. Exceptions to the decision of the presiding officer, filed pursuant to §502.227 shall be served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be served no later than ten (10) days after the date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within 30 days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in §502.227.

(h) Intervention by persons other than protestants ordinarily shall not be granted. In the event intervention of such persons is granted, the presiding officer of the Commission may attach such conditions or limitations as are deemed necessary to effectuate the purpose of this section. [Rule 67.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984; 57 FR 44508, Sept. 28, 1992; 58 FR 58976, Nov. 5, 1993; 60 FR 27229, May 23, 1995]

§502.68 Declaratory orders and fee.

(a)(1) The Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty.

(2) Petitions for the issuance thereof shall: state clearly and concisely the controversy or uncertainty; name the persons and cite the statutory authority involved; include a complete statement of the facts and grounds prompting the petition, together with full disclosure of petitioner's interest; be served upon all parties named therein; and conform to the requirements of subpart H of this part.

(3) Petitions shall be accompanied by remittance of a $162 filing fee.

(b) Petitions under this section shall be limited to matters involving conduct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section shall be invoked solely for the purpose of obtaining declaratory rulings which will allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparation or cease and desist orders are sought, are not proper subjects of petitions under this section. Such matters must be adjudicated either by filing of a complaint under section 22 of the Shipping Act, 1916 or section 11 of the Shipping Act of 1984 and §502.62, or by filing of a petition for investigation under §502.69.

(c) Petitions under this section shall be accompanied by the complete factual and legal presentation of petitioner as to the desired resolution of the controversy or uncertainty, or a detailed explanation why such can only be developed through discovery or evidentiary hearing.

(d) Replies to the petition shall contain the complete factual and legal presentation of the replying party as to

the desired resolution, or a detailed explanation why such can only be developed through discovery or evidentiary hearing. Replies shall conform to the requirements of § 502.74 and shall be served pursuant to subpart H of this part.

(e) No additional submissions will be permitted unless ordered or requested by the Commission or the presiding officer. If discovery or evidentiary hearing on the petition is deemed necessary by the parties, such must be requested in the petition or replies. Requests shall state in detail the facts to be developed, their relevance to the issues, and why discovery or hearing procedures are necessary to develop such facts.

(f)(1) A notice of filing of any petition which meets the requirements of this section shall be published in the FEDERAL REGISTER. The notice will indicate the time for filing of replies to the petition. If the controversy or uncertainty is one of general public interest, and not limited to specifically named persons, opportunity for reply will be given to all interested persons including the Commission's Bureau of Enforcement.

(2) In the case of petitions involving a matter limited to specifically named persons, participation by persons not named therein will be permitted only upon grant of intervention by the Commission pursuant to § 502.72.

(3) Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

(g) Petitions for declaratory order which conform to the requirements of this section will be referred to a formal docket. Referral to a formal docket is not to be construed as the exercise by the Commission of its discretion to issue an order on the merits of the petition. [Rule 68.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984; 59 FR 59170, Nov. 16, 1994; 61 FR 51233, Oct. 1, 1996]

§ 502.69 Petitions—general and fee.

(a) Except when submitted in connection with a formal proceeding, all claims for relief or other affirmative action by the Commission, including appeals from Commission staff action, except as otherwise provided in this part, shall be by written petition, which shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provisions or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of subpart H of this part. Replies thereto shall conform to the requirements of § 502.74.

(b) Petitions shall be accompanied by remittance of a $162 filing fee. [Rule 69.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4143, Feb. 10, 1987; 59 FR 59170, Nov. 16, 1994]

§ 502.70 Amendments or supplements to pleadings.

(a) Amendments or supplements to any pleadings will be permitted or rejected, either in the discretion of the Commission if the case has not been assigned to a presiding officer for hearing, or otherwise, in the discretion of the officer designated to conduct the hearing, except that after a case is assigned for hearing, no amendment shall be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state its case more fully and in more detail by way of amendment.

(b) A response to an amended pleading must be filed and served in conformity with the requirements of subpart H of this part and § 502.74, unless the Commission or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading, except that the presiding officer may authorize the service of amended complaints directly by the parties rather than by the Secretary of the Commission.

(c) Whenever by the rules in this part a pleading is required to be verified,

the amendment or supplement shall also be verified. [Rule 70.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27210, May 7, 1993]

§502.71 Motions for more definite statement.

If a pleading (including a complaint or counter-complaint filed pursuant to §502.62 or §502.64) to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall be filed within 15 days of the pleading and shall point out the defects complained of and the details desired. If the motion is granted and the order of the presiding officer is not obeyed within 10 days after service of the order or within such time as the presiding officer may fix, the presiding officer may strike the pleading to which the motion was directed or make such order as is deemed just. If the motion is disallowed, the time for responding to the pleading shall be extended to a date 10 days after service of the notice of disallowance.

[58 FR 27210, May 7, 1993]

§502.72 Petition for leave to intervene.

(a) A petition for leave to intervene may be filed in any proceeding and shall be served on existing parties by the petitioner pursuant to subpart H of this part. An additional fifteen (15) copies of the petition shall be filed with the Secretary for the use of the Commission. Upon request, the Commission will furnish a service list to any member of the public pursuant to part 503 of this chapter. The petition shall set forth the grounds for the proposed intervention and the interest and position of the petitioner in the proceeding and shall comply with the other applicable provisions of subpart H of this part, and if affirmative relief is sought, the basis for such relief. Such petition shall also indicate the nature and extent of the participation sought, e.g., the use of discovery, presentation of evidence and examination of witnesses.

(b)(1) Petitions for leave to intervene as a matter of right will only be granted upon a clear and convincing showing that:

(i) The petitioner has a substantial interest relating to the matter which is the subject of the proceeding warranting intervention; and

(ii) The proceeding may, as a practical matter, materially affect the petitioner's interest; and

(iii) The interest is not adequately represented by existing parties to the proceeding.

(2) Petitions for intervention as a matter of Commission discretion may be granted only upon a showing that:

(i) A common issue of law or fact exists between the petitioner's interests and the subject matter of the proceeding; and

(ii) Petitioner's intervention will not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights of or be duplicative of positions of any existing party; and

(iii) The petitioner's participation may reasonably be expected to assist in the development of a sound record.

(3) The timeliness of the petition will also be considered in determining whether a petition will be granted under paragraphs (b)(1) or (b)(2) of this section. If filed after hearings have been closed, a petition will not ordinarily be granted.

(c) In the interests of: (1) Restricting irrelevant, duplicative, or repetitive discovery, evidence or arguments; (2) having common interests represented by a spokesperson; and (3) retaining authority to determine priorities and control the course of the proceeding, the presiding officer, in his or her discretion, may impose reasonable limitations on an intervenor's participation, e.g., the filing of briefs, presentation of evidence on selected factual issues, or oral argument on some or all of the issues.

(d) Absent good cause shown, any intervenor desiring to utilize the procedures provided by subpart L must commence doing so no later than fifteen (15) days after its petition for leave to intervene has been granted. If the petition is filed later than thirty (30) days after the date of publication in the FEDERAL REGISTER of the Commission's Order instituting the proceeding or notice of complaint filed, petitioner will

be deemed to have waived its right to utilize such procedures, unless good cause is shown for the failure to file the petition within the 30-day period. The use of subpart L procedures by an intervenor whose petition was filed beyond such 30-day period will in no event be allowed, if, in the opinion of the presiding officer, such use will result in delaying the proceeding unduly.

(e) If intervention is granted before or at a prehearing conference convened for the purpose of considering matters relating to discovery, the intervenor's discovery matters may also be considered at that time, and may be limited under the provisions of paragraph (c) of this section.

(f) A form of petition for leave to intervene is set forth in Exhibit No. 3 to this subpart. [Rule 72.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4143, Feb. 10, 1987]

§ 502.73 Motions.

(a) In any docketed proceeding, an application or request for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions shall be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter shall be referred to the Commission. If the proceeding is not before the presiding officer, motions shall be designated as ''petitions'' and shall be addressed to and passed upon by the Commission.

(b) Motions shall be in writing, except that a motion made at a hearing shall be sufficient if stated orally upon the record, unless the presiding officer directs that it be reduced to writing.

(c) All written motions shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested; and shall conform with the requirements of subpart H of this part.

(d) Oral argument upon a written motion may be permitted at the discretion of the presiding officer or the Commission, as the case may be.

(e) A repetitious motion will not be entertained. [Rule 73.]

§ 502.74 Replies to pleadings, motions, applications, etc.

(a)(1) Except as provided under subpart V of this part, a reply to a reply is not permitted.

(2) Except as otherwise provided respecting answers (§ 502.64), shortened procedure (subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), replies to petitions for attorney fees under the Equal Access to Justice Act (§ 502.503(b)(1)), and the documents specified in paragraph (b) of this section, any party may file and serve a reply to any written motion, pleading, petition, application, etc., permitted under this part within fifteen (15) days after the date of service thereof, unless a shorter period is fixed under § 502.103.

(b) When time permits, replies also may be filed to protests seeking suspension of tariffs (§ 502.67), applications for enlargement of time and postponement of hearing (subpart G of this part), and motions to take depositions (§ 502.201).

(c) Replies shall be in writing, shall be verified if verification of original pleading is required, shall be so drawn as to fully and completely advise the parties and the Commission as to the nature of the defense, shall admit or deny specifically and in detail each material allegation of the pleading answered, shall state clearly and concisely the facts and matters of law relied upon, and shall conform to the requirements of subpart H of this part. [Rule 74.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 28264, July 29, 1987]

§ 502.75 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under the fifth paragraph of section 15 of the Shipping Act, 1916, or section 5(d) of the Shipping Act of 1984, the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued, which date will be not more than eight months from the date the complaint was filed.

(b) Any party to a proceeding conducted under this section who desires

to utilize the prehearing discovery procedures provided by subpart L of this part shall commence doing so at the time it files its initial pleading, i.e., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to §502.113. Answers or objections to discovery requests shall be subject to the normal provisions set forth in subpart L.

(c) Exceptions to the decision of the presiding officer, filed pursuant to §502.227, shall be filed and served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be filed and served no later than fifteen (15) days after date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within thirty (30) days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in §502.227. [Rule 75.]

§502.76 Brief of an amicus curiae.

(a) A brief of an amicus curiae may be filed only by leave of the Commission or the presiding officer granted on motion with notice to the parties, or at the request of the Commission or the presiding officer, except that leave shall not be required when the brief is presented by the United States or any agency or officer of the United States. The brief may be conditionally filed with the motion for leave. A brief of an amicus curiae shall be limited to questions of law or policy.

(b) A motion for leave to file an amicus brief shall identify the interest of the applicant and shall state the reasons why such a brief is desirable.

(c) Except as otherwise permitted by the Commission or the presiding officer, an amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support. The Commisson or the presiding officer shall grant leave for a later filing only for cause shown, in which event the period within which an opposing party may answer shall be specified.

(d) A motion of an amicus curiae to participate in oral argument will be granted only in accordance with the requirements of §502.241. [Rule 76.]

[52 FR 4143, Feb. 10, 1987]

EXHIBIT NO. 1 TO SUBPART E [§502.62]—COMPLAINT FORM AND INFORMATION CHECKLIST

Before the Federal Maritime Commission

Complaint

———— v. ———— [Insert without abbreviation exact and complete name of party or parties respondent]

I. The complainant is [State in this paragraph whether complainant is an association, a corporation, firm, or partnership and the names of the individuals composing the same. State also the nature and principal place of business].

II. The respondent is [State in this paragraph whether respondent is an association, a corporation, firm, or partnership and the names of the individuals composing the same. State also the nature and principal place of business].

III. Allegation of jurisdiction. [State in this paragraph a synopsis of the statutory bases for claim(s)].

IV. That [State in this or subsequent paragraphs to be lettered ''A'', ''B'', etc., the matter or matters complained of. If rates are involved, name each rate, fare, charge, classification, regulation, or practice, the lawfulness of which is challenged].

V. That by reason of the facts stated in the foregoing paragraphs, complainant has been (and is being) subject to injury as a direct result of the violations by respondent of sections ——— [State in this paragraph the causal connection between the alleged illegal acts of respondent and the claimed injury to complainant, with all necessary statutory sections relied upon].

VI. That complainant has been injured in the following manner: To its damage in the sum of $———.

VII. Wherefore complainant prays that respondent be required to answer the charges herein; that after due hearing, an order be made commanding said respondent (and each of them): to cease and desist from the aforesaid violations of said act(s); to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to said complainant by way of reparations for the unlawful conduct hereinabove described the sum of $———, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as the Commission determines to be proper in the premises.

Dated at ———, this —— day of ———, 19—.

_____

[Complainant's signature]

_____

[Office and post office address]

_____

[Signature or agent or attorney of complainant]

_____

[Post office address]

Verification [See §502.112]

State of ———, County of ———, ss: ———, ——— being first duly sworn on oath deposes and says that he (she) is

_____

[The complainant, or, if a firm, association, or corporation, state the capacity of the affiant]

and is the person who signed the foregoing complaint; that he (she) has read the complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ——— this ——— day ———, A.D. 19—.

[Seal] _____

(Notary Public)

My Commission expires ————.

Information To Assist in Filing Formal Complaint

General

Formal Docket Complaint procedures usually involve an evidentiary hearing on disputed facts. Where no evidentiary hearing on disputed facts is necessary and where all parties agree to the use of different procedures, a complaint may be processed under subpart K [Shortened Procedure] or subpart S [Informal Docket for a claim of $10,000 or less]. An application for refund or waiver of collection of freight charges due to tariff error should be filed pursuant to §502.92 and Exhibit No. 1 to subpart F. Consider also the feasibilty of filing a Petition for Declaratory Order under §502.68.

Under the Shipping Act of 1984 [foreign commerce], the complaint must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of complainant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the complaint must be filed within two (2) years from the time the cause of action accrues and may be brought only against a ''person subject to the Act'', e.g., a common carrier, terminal operator or freight forwarder.

Because of the limitation periods, a complaint is deemed to be filed only when it is physically received at the Commission. [See §502.114]

The format of exhibit No. 1 to subpart E must be followed and a verification must be included. (See §§502.21–502.32, 502.62 and 502.112.) The complaint must also fully describe the alleged violations of the specific section(s) of the shipping statute(s) involved and how complainant is or was directly injured as a result. An original and fifteen copies, plus a further number of copies sufficient for service upon each named respondent must be filed and the Commission will serve the other parties. [*See* §§502.113 and 502.118]

In addition to subpart E, some other important rules are: §502.2 (mailing address; hours); §502.7 (documents in foreign language); §502.23 (Notice of Apperance); §502.41 (parties; how designated); §502.44 (necessary and proper parties to certain complaint proceedings); and subpart H (form, execution and service of documents).

Checklist of Specific Information

The following checklist sets forth items of information which are pertinent in cases submitted to the Commission pursuant to the regulatory provisions of the shipping statutes. The list is not intended to be inclusive, nor does it indicate all of the essential allegations which may be material in specific cases.

1. Identity of complainant; if an individual, complainant's residence; if a partnership, name of partners, business and principal place thereof; if a corporation, name, state of incorporation, and principal place of business. The same information with respect to respondents, intervenors, or others who become parties is necessary.

2. Description of commodity involved, with port of origin, destination port, weight, consignor and consignee of shipment(s), date shipped from loading port, and date received at discharge port.

3. Rate charged, with tariff authority for same, and any rule or regulation applicable thereto; the charges collected and from whom.

4. Route of shipment, including any transshipment; bill of lading reference.

5. Date of delivery or tender of delivery of each shipment.

6. Where the rate is challenged and comparisons are made with rates on other commodities, the form, packing, density, susceptibility to damage, tendency to contaminate other freight, value, volume of movement, competitive situation, and all matters relating to the cost of loading, unloading, and otherwise handling of respective commodities.

7. If comparisons are made between the challenged rates and rates on other routes, the allegation showing similarity of service should include at least respective distances,

volumes of movement, cost of handling, and competitive conditions.

8. History of rate with reasons for previous increases or decreases of same.

9. When the complaint alleges undue prejudice or preference, the complaint should indicate what manner of undue prejudice or preference is involved, and whether to a particular person, locality, or description of traffic; how the preference or discrimination resulted and the manner in which the respondents are responsible for the same; and how complainant is damaged by the prejudice or preference, in loss of sales or otherwise.

10. Care should be exercised to differentiate between the measure of damages required in cases where prejudice or preference is charged, where the illegality of rates is charged and other situations.

11. Where a filed agreement or conduct under the agreement is challenged, all necessary provisions of the shipping statute involved must be specifically cited, showing in detail how a section was violated and how the conduct or agreement injures complainant. The complaint should be thorough and clear as to all relief complainant is requesting.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 55 FR 28400, July 11, 1990]

EXHIBIT NO. 2 TO SUBPART E [§502.64]—ANSWER TO COMPLAINT

Before the Federal Maritime Commission

Answer

———— v. ————

[Complainant] [Respondent]

Docket No. ————

The above-named respondent, for answer to the complaint in this proceeding, states:

I. [State in this and subsequent paragraphs to be numbered II, III, etc., appropriate and responsive admissions, denials, and averments, specifically answering the complaint, paragraph by paragraph.]

Wherefore respondent prays that the complaint in this proceeding be dismissed.

———————————————

[Name of respondent]

By ———————————————

[Title of Officer]

———————————————

[Office and post office address]

———————————————

[Signature of attorney or agent]

———————————————

[Post office address]

Date ————, 19–.

Verification

[See form for verification of complaint in Exhibit No. 1 to this subpart and §502.112.]

Certificate of Service

[See §502.114.]

EXHIBIT NO. 3 TO SUBPART E [§502.72]—PETITION FOR LEAVE TO INTERVENE

Before the Federal Maritime Commission

Petition for Leave To Intervene

——— v. ——— Docket No. ———.

Your petitioner, ————, respectfully represents that he (she) has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is [State whether an association, corporation, firm, or partnership, etc., as in Exhibit No. 1 to this subpart, and nature and principal place of business].

II. [Here set out specifically position and interest of petitioner in the above-entitled proceeding and other essential averments in accordance with Rule 72 (46 CFR 502.72).]

Wherefore said ———— requests leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought, insert appropriate request here.]

Dated at ———, this —— day of ———, 19—.

———————————————

Petitioner's signature]

———————————————

[Office and post office address]

———————————————

[Signature of agent or attorney of petitioner]

———————————————

[Post office address]

Verification and Certificate of Service

[See Exhibits Nos. 1 and 2 to this subpart.]

Subpart F—Settlement; Prehearing Procedure

§502.91 Opportunity for informal settlement.

(a) Parties are encouraged to make use of all the procedures of this part which are designed to simplify or avoid formal litigation, and to assist the parties in reaching settlements whenever

it appears that a particular procedure would be helpful.

(b) Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(c) No stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. [Rule 91.]

(d) Any party may request, or the presiding officer may suggest, that a mediator or settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a mediator or settlement judge who is acceptable to all parties. The mediator or settlement judge shall convene and preside over conferences and settlement negotiations and shall report to the Chief Administrative Law Judge, within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993]

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier or a shipper may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in the tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier, the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to subpart H of this part. When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with Rule 117 (46 CFR 502.117) to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

(ii) The application for refund or waiver must be accompanied by remittance of an $86 filing fee.

(iii) Date of shipment shall mean the date of sailing of the vessel from the port at which the cargo was loaded.

(4) By filing, the applicant(s) agrees that:

(i) If permission is granted by the Commission:

(A) An appropriate notice will be published in the tariff; or

(B) Other steps will be taken as the Commission may require which give notice of the rate on which such refund or waiver would be based; and

(C) Additional refunds or waivers shall be made with respect to other shipments in the manner prescribed by the Commission's order approving the application.

(ii) If the application is denied, other steps will be taken as the Commission may require.

(5) Application for refund or waiver shall be made in accordance with Exhibit No. 1 to this subpart. Any application which does not furnish the information required by the prescribed form or otherwise comply with this rule may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

(b) Common carriers by water in interstate or intercoastal commerce, or conferences of such carriers, may

file application for permission to refund a portion of freight charges collected from a shipper or waive collection of a portion of freight charges from a shipper. All such applications shall be filed within the 2-year statutory period referred to in §502.63, and shall be made in accordance with Exhibit No. 1 to this subpart. Such applications will be considered the equivalent of a complaint and answer thereto admitting the facts complained of. If allowed, an order for payment or waiver will be issued by the Commission.

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and one (1) copy to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Each application shall be acknowledged with a reference to the assigned docket number and referred for decision, either to a Special Dockets Officer or to the Office of Administrative Law Judges, at the discretion of the Secretary. The deciding official may, in his or her discretion, require the submission of additional information. Formal proceedings as described in other rules of this part need not be conducted. The deciding official shall issue an initial determination to which the provisions of §502.227 shall be applicable. If the application is granted, the initial determination or, as may otherwise be applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

[49 FR 44369, Nov. 6, 1984, as amended at 53 FR 27861, July 25, 1988; 57 FR 3026, Jan. 27, 1992; 59 FR 59170, Nov. 16, 1994]

§502.94 Prehearing conference.

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under §502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

(i) Simplification of the issues;

(ii) The necessity or desirability of amendments to the pleadings;

(iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(iv) Limitation on the number of witnesses;

(v) The procedure at the hearing;

(vi) The distribution to the parties prior to the hearing of written testimony and exhibits;

(vii) Consolidation of the examination of witnesses by counsel;

(viii) Such other matters as may aid in the disposition of the proceeding.

(2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He or she shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

(3) The presiding officer shall rule upon all matters presented for decision, orally upon the record when feasible, or by subsequent ruling in writing. If a party determines that a ruling made orally does not cover fully the issue presented, or is unclear, such party may petition for a further ruling thereon within ten (10) days after receipt of the transcript.

(b) In any proceeding under the rules in this part, the presiding officer may call the parties together for an informal conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purposes of this section. [Rule 94.]

(c) At any prehearing conference, consideration shall be given to whether the use of alternative means of dispute resolution would be appropriate or useful for the disposition of the proceeding.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993]

§502.95 Prehearing statements.

(a) Unless waiver is granted by the presiding officer, it shall be the duty of all parties to a proceeding to prepare a statement or statements at a time and

in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth the following matters, unless otherwise ordered by the presiding officer:

(1) Issues involved in the proceeding.

(2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible.

(3) Facts in dispute.

(4) Witnesses and exhibits by which disputed facts will be litigated.

(5) A brief statement of applicable law.

(6) The conclusion to be drawn.

(7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case.

(8) Any appropriate comments, suggestions or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

(c) The presiding officer may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement. Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances.

(d) Following the submission of prehearing statements, the presiding officer may, upon motion or otherwise, convene a prehearing conference for the purpose of further narrowing issues and limiting the scope of the hearing if, in his or her opinion, the prehearing statements indicate lack of dispute of material fact not previously acknowledged by the parties or lack of legitimate need for cross-examination and is authorized to issue appropriate orders consistent with the purposes stated in this section. [Rule 95.]

EXHIBIT NO. 1 TO SUBPART F

[§ 502.92]

APPLICATION FOR REFUND OF OR WAIVER FOR FREIGHT CHARGES DUE TO TARIFF ERROR

Federal Maritime Commission Special Docket No. ———

Amount of Freight Charges involved in request ———

Application of [Name of carrier, or (if under the 1984 Act) shipper] for the benefit of [Name of person who paid or is responsible for payment of freight charges].

1. *Shipment(s).* Here fully describe:

(a) Commodity [according to tariff description].

(b) Number of shipments.

(c) Weight or measurement of individual shipment, as well as, all shipments.

(d) Date(s) of shipment(s), i.e., sailing(s) [furnish supporting evidence].

(e) Shipper and place of origin.

(f) Consignee, place of destination and routing of shipment(s).

(g) Name of carrier and date shown on bill of lading [furnish legible copies of bill(s) of lading].

(h) Names of participating ocean carrier(s).

(i) Name(s) of vessel(s) involved in carriage.

(j) Amount of freight charges actually collected [furnish legible copies of rated bill(s) of lading or freight bill(s), as appropriate] broken down (i) per shipment, (ii) in the aggregate, (iii) by whom paid, (iv) who is responsible for payment if different, and (v) date(s) of collection.

(k) Rate applicable at time of shipment [furnish legible copies of tariff page(s)].

(l) Rate sought to be applied [furnish legible copies of tariff page(s)].

(m) Amount of freight charges at rate sought to be applied, per shipment and in the aggregate.

(n) Amount of freight charges sought to be (refunded) (waived), per shipment and in the aggregate.

2. Furnish docket numbers of other special docket applications or decided or pending formal proceedings involving the same rate situations.

3. Furnish any information or evidence as to whether grant of the application will result in discrimination among shippers, ports or carriers.

4. State whether there are shipments of other shippers of the same commodity which (i) moved via the carrier(s) or conference involved in this application during the period of time beginning on the date the tariff omitting the intended rate become effective or on the date the intended rate absent the

mistake would have became effective and ending on the day before the effective date of the conforming tariff, and (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in No. 1, above.

5. Fully explain the basis for the application, i.e., the clerical or administrative error or error due to inadvertence, or reasons why freight charges collected are thought to be unlawful (domestic commerce) showing why the application should be granted. Furnish affidavits, if appropriate, and legible copies of all supporting documents. If the error is due to inadvertence, specify the date when the carrier and/or conference intended or agreed to file a new tariff.

[Here set forth Name of Applicant, Signature of Authorized Person, Typed or Printed Name of Person, Title of Person and Date]

State of ————, County of ————. ss:

I, ————, on oath declare that I am ——— of the above-named applicant, that I have read this application and know its contents, and that they are true.

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ———, A.D. 19—.

(Seal) ————————————————

Notary Public

My Commission expires ———.

Affidavit of Carrier(s)

[Here, as applicable, set forth same type of affidavit(s) and notarization(s) as set forth on page 2 of this exhibit for carrier, for any other water carrier participating in the transportation under a joint through rate.]

Certificate of Mailing

I certify that the date shown below is the date of mailing [or date of delivery to courier] of the original and three (3) copies of this application to the Secretary, Federal Maritime Commission, Washington, D.C., 20573.

Dated at ———, this —— day of ———, 19—.

[Signature] ————————————.

For ———.

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4144, Feb. 10, 1987; 53 FR 27861, July 25, 1988]

Subpart G—Time

§ 502.101 Computation.

In computing any period of time under the rules in this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or national legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or national legal holidays shall be excluded from the computation. [Rule 101.]

§ 502.102 Enlargement of time to file documents.

Motions for enlargement of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, shall set forth the reasons for the motion. Such motions will be granted only under exceptional circumstances duly demonstrated in the request. Such motions shall conform to the requirements of subpart H of this part, except as to service if they show that the parties have received actual notice of the motion; and in relation to briefs, exceptions, and replies to exceptions, such motions shall conform to the further provisions of §§ 502.222 and 502.227. Upon motion made after the expiration of the specified period, the filing may be permitted where reasonable grounds are found for the failure to file. Replies to such motions shall conform to the requirements of § 502.74. [Rule 102.]

§ 502.103 Reduction of time to file documents.

Except as otherwise provided by law and for good cause, the Commission, with respect to matters pending before it, and the presiding officer, with respect to matters pending before him or her, may reduce any time limit prescribed in the rules in this part. [Rule 103.]

§ 502.104 Postponement of hearing.

Motions for postponement of any hearing date shall set forth the reasons for the motion, and shall conform to the requirements of subpart H of this part, except as to service if they show that parties have received such actual notice of motion. Such motions will be granted only if found necessary to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party. Replies to such

motions shall conform to the requirements of § 502.74. [Rule 104.]

§ 502.105 Waiver of rules governing enlargements of time and postponements of hearings.

The Commission, the presiding officer, or the Chief Administrative Law Judge may waive the requirements of §§ 502.102 and 502.104, as to replies to pleadings, etc., to motions for enlargement of time or motions to postpone a hearing, and may rule ex parte on such requests. Requests for enlargement of time or motions to postpone or cancel a prehearing conference or hearing must be received, whether orally or in writing, at least five (5) days before the scheduled date. Except for good cause shown, failure to meet this requirement may result in summary rejection of the request. [Rule 105.]

Subpart H—Form, Execution, and Service of Documents

§ 502.111 Form and appearance of documents filed with Commission.

(a) All papers to be filed under the rules in this part may be reproduced by printing or by any other process, provided the copies are clear and legible, shall be dated, the original signed in ink, show the docket description and title of the proceeding, and show the title, if any, and address of the signer. If typewritten, the impression shall be on only one side of the paper and shall be double spaced except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall be not more than 8½ inches wide and 12 inches long, with a left hand margin 1½ inches wide. Printed documents shall be printed in clear type (never smaller than small pica or 11-point type) adequately leaded, and the paper shall be opaque and unglazed. [Rule 111.]

(b) Filings by facsimile will not be accepted, except for the purpose of meeting filing deadlines of protests filed pursuant to § 502.67 or replies thereto, in which case the original and required copies must also be certified as being deposited in the mail or delivered to a courier on or before the deadline. Photocopies of facsimile transmissions of signature pages on other filings will be tentatively accepted for the purpose of meeting filing deadlines pending receipt of the original within seven working days. Use of photocopies of facsimile transmissions in exhibits to part 502 filings is permitted.

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 502.112 Subscription and verification of documents.

(a) If a party is represented by an attorney or other person qualified to practice before the Commission under the rules in this part, each pleading, document or other paper of such party filed with the Commission shall be signed by at least one person of record admitted to practice before the Commission in his or her individual name, whose address shall be stated. Except when otherwise specifically provided by rule or statute, such pleading, document or paper need not be verified or accompanied by affidavit. The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by the signer that the signer has read the pleading, document or paper; that the signer is authorized to file it; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. For a willful violation of this section, a person admitted or qualified to practice before the Commission may be subjected to appropriate disciplinary action.

(b) If a party is not represented by a person admitted or qualified to practice before the Commission, each pleading, document or other paper of such party filed with the Commission shall be signed and verified under oath by the party or by a duly authorized officer or agent of the party, whose address and title shall be stated. The

form of verification shall be substantially as set forth in exhibit No. 1 to subpart E. [Rule 112.]

(c) Wherever, under any rules of this part, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition under § 502.203 or § 502.204), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by such person, as true under penalty of perjury, in substantially the following form.

(1) If executed without the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.''

(2) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.''

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 58 FR 27210, May 7, 1993]

§ 502.113 Service by the Commission.

Complaints filed pursuant to § 502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to § 502.70(b)), and complainant's memoranda filed in shortened procedure cases will be served by the Secretary of the Commission. In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding. [Rule 113.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27210, May 7, 1993]

§ 502.114 Service and filing by parties.

(a) Except as otherwise specifically provided by the rules in this part, all pleadings, documents, and papers of every kind (except requests for subpenas) in proceedings before the Commission under the rules in this part (other than documents served by the Commission under § 502.113 and documents submitted at a hearing or prehearing conference) shall, when tendered to the Commission or the presiding officer for filing, show that service has been made upon all parties to the proceeding and upon any other persons required by the rules in this part to be served. Such service shall be made by delivering one copy to each party: by hand delivering in person; by mail, properly addressed with postage prepaid; or by courier.

(b) Service on all prior participants shall be shown when submitting comments or replies beyond the initial round, or when submitting post-decisional pleadings and replies such as petitions for reconsideration, or for stay under rule 261 or to reopen under rule 230 in all general notice proceedings, including those involving disposition of petitions for rulemaking (rule 51), petitions for declaratory order (rule 68), petitions general (rule 69), notices of proposed rulemaking (rule 53), proceedings under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (part 585), and proceedings under section 13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5) (part 587). A list of all participants may be obtained from the Secretary of the Commission.

(c) Except with respect to filing of complaints pursuant to §§ 502.62 and 502.63, protests pursuant to § 502.67 and claims pursuant to § 502.302, the date of filing shall be either the date on which the pleading, document, or paper is physically lodged with the Commission by a party or the date which a party certifies it to have been deposited in the mail or delivered to a courier. [Rule 114.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 502.115 Service on attorney or other representative.

When a party has appeared by attorney or other representative, service upon each attorney or other representative of record will be deemed service upon the party, except that, if two or more attorneys of record are partners

or associates of the same firm, only one of them need be served. [Rule 115.]

§ 502.116 Date of service.

The date of service of documents served by the Commission shall be the date shown in the service stamp thereon. The date of service of documents served by parties shall be the day when matter served is deposited in the United States mail, delivered to a courier, or is delivered in person, as the case may be. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 116.]

§ 502.117 Certificate of service.

The original of every document filed with the Commission and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon [all parties of record or name of person(s)] by [mailing, delivering to courier or delivering in person] a copy to each such person.

Dated at, ——— this ——— day of ——— 19—.

(Signature) ———————————————

(For) ———————————————

[Rule 117.]

§ 502.118 Copies of documents for use of the Commission.

(a) Except as otherwise provided in the rules in this part, the original and fifteen (15) copies of every document filed and served in proceedings before the Commission shall be furnished for the Commission's use. If a certificate of service accompanied the original document, a copy of such certificate shall be attached to each such copy of the document.

(b) In matters pending before an administrative law judge the following copy requirements apply.

(1) An original and fifteen copies shall be filed with the Secretary of:

(i) Appeals and replies thereto filed pursuant to § 502.153;

(ii) Memoranda submitted under shortened procedures of subpart K of this part;

(iii) Briefs submitted pursuant to § 502.221;

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule either directly or upon review of the administrative law judge's disposition thereof, pursuant to § 502.227;

(v) Answers to complaints filed pursuant to § 502.64.

(2) An original and four copies shall be filed with the Secretary of prehearing statements required by § 502.95, stipulations under § 502.162, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

(3)(i) A single copy shall be filed with the Secretary of requests for discovery, answers, or objections exchanged among the parties under procedures of subpart L of this part. Such materials will not be part of the record for decision unless admitted by the presiding officer or Commission.

(ii) Motions filed pursuant to § 502.201 are governed by the requirements of paragraph (b)(2) of this section and motions involving persons and documents located in a foreign country are governed by the requirements of paragraph (b)(1)(iv) of this section.

(4) One copy of each exhibit shall be furnished to the official reporter, to each of the parties present at the hearing and to the Presiding Officer unless he or she directs otherwise. If submitted other than at a hearing, the ''reporter's'' copy of an exhibit shall be furnished to the administrative law judge for later inclusion in the record if and when admitted.

(5) Copies of prepared testimony submitted pursuant to §§ 502.67(d) and 502.157 are governed by the requirements for exhibits in paragraph (b)(4) of this section. [Rule 118.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 502.119 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all filings which contain information previously designated as confidential pursuant to §§ 502.167, 502.201(i)(1)(vii), or any other rules of this part or for which a request for protective order pursuant to § 502.201(i)(1)(vii) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter which identifies the filing as confidential and describes the nature and extent of the authority for requesting confidential treatment.

(b) Such filings shall consist of public and confidential copies. The public copies shall exclude confidential materials, shall indicate on the cover page and on each affected page ''confidential materials excluded,'' and shall be filed in an original and one copy. The confidential copies shall consist of the complete filing and shall include a cover page marked ''confidential-restricted,'' with the confidential materials likewise clearly marked on each page.

(c) Confidential treatment afforded by this section is subject to the proviso that any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 119.]

[55 FR 28400, July 11, 1990, as amended at 58 FR 27211, May 7, 1993]

Subpart I—Subpenas

§ 502.131 Requests; issuance.

Subpenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party, without notice to any other party. Requests for subpenas for the attendance of witnesses may be made orally or in writing; requests for subpenas for the production of evidence shall be in writing. The party requesting the subpena shall tender to the presiding officer an original and at least two copies of such subpena. Where it appears to the presiding officer that the subpena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may in his or her discretion, as a condition precedent to the issuance of the subpena, require the person seeking the subpena to show the general relevance and reasonable scope of the testimony or other evidence sought. [Rule 131.]

§ 502.132 Motions to quash or modify.

(a) Except when issued at a hearing, or in connection with the taking of a deposition, within ten (10) days after service of a subpena for attendance of a witness or a subpena for production of evidence, but in any event at or before the time specified in the subpena for compliance therewith, the person to whom the subpena is directed may, by motion with notice to the party requesting the subpena, petition the presiding officer to quash or modify the subpena.

(b) If served at the hearing, the person to whom the subpena is directed may, by oral application at the hearing, within a reasonable time fixed by the presiding officer, petition the presiding officer to revoke or modify the subpena.

(c) If served in connection with the taking of a deposition pursuant to § 502.203 unless otherwise agreed to by all parties or otherwise ordered by the presiding officer, the party who has requested the subpena shall arrange that it be served at least twenty (20) days prior to the date specified in the subpena for compliance therewith, the person to whom the subpena is directed may move to quash or modify the subpena within ten (10) days after service of the subpena, and a reply to such motion shall be served within five (5) days thereafter. [Rule 132.]

§ 502.133 Attendance and mileage fees.

Witnesses summoned by subpena to a hearing are entitled to the same fees and mileage that are paid to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

§ 502.134 Service of subpenas.

If service of a subpena is made by a United States marshal, or his or her deputy, or an employee of the Commission, such service shall be evidenced by his or her return thereon. If made by

any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, the reasons for the failure shall be stated on the original subpena. In making service, the original subpena shall be exhibited to the person served, shall be read to him or her if he or she is unable to read, and a copy thereof shall be left with him or her. The original subpena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpena, to the presiding officer before whom the person named in the subpena is required to appear. [Rule 134.]

§ 502.135 Subpena of Commission staff personnel, documents or things.

(a) A subpena for the attendance of Commission staff personnel or for the production of documentary materials in the possession of the Commission shall be served upon the Secretary. If the subpena is returnable at hearing, a motion to quash may be filed within five (5) days of service and attendance shall not be required until the presiding officer rules on said motion. If the subpena is served in connection with prehearing depositions, the procedure to be followed with respect to motions to quash and replies thereto will correspond to the procedures established with respect to motions and replies in § 502.132(c).

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel subpenaed under this section. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.135(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission, on its own motion, reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 135.]

§ 502.136 Enforcement.

In the event of failure to comply with any subpena or order issued in connection therewith, the Commission may seek enforcement as provided in § 502.210(b). [Rule 136.]

Subpart J—Hearings; Presiding Officers; Evidence

§ 502.141 Hearings not required by statute.

The Commission may call informal public hearings, not required by statute, to be conducted under the rules in this part where applicable, for the purpose of rulemaking or to obtain information necessary or helpful in the determination of its policies or the carrying out of its duties, and may require the attendance of witnesses and the production of evidence to the extent permitted by law. [Rule 141.]

§ 502.142 Hearings required by statute.

In complaint and answer cases, investigations on the Commission's own motion, and in other rulemaking and adjudication proceedings in which a hearing is required by statute, formal hearings shall be conducted pursuant to 5 U.S.C. 554. [Rule 142.]

§ 502.143 Notice of nature of hearing, jurisdiction and issues.

Persons entitled to notice of hearings, except those notified by complaint served under § 502.133, will be duly and timely informed of (a) the nature of the proceeding, (b) the legal authority and jurisdiction under which the proceeding is conducted, and (c) the terms, substance, and issues involved, or the matters of fact and law asserted, as the case may be. Such notice shall be published in the FEDERAL REGISTER unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. [Rule 143.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§502.144 Notice of time and place of hearing.

Notice of hearing will designate the time and place thereof, the person or persons who will preside, and the kind of decision to be issued. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place of the change thereof, due regard being had for the public interest and the convenience and necessity of the parties or their representatives. Notice may be served by mail or telegraph. [Rule 144.]

§502.145 Presiding officer.

(a) *Definition. Presiding officer* includes, where applicable, a member of the Commission or an administrative law judge. (See §502.25.)

(b) *Designation of administrative law judge.* An administrative law judge will be designated by the Chief of the Commission's Office of Administrative Law Judges to preside at hearings required by statute, in rotation so far as practicable, unless the Commission or one or more members thereof shall preside, and will also preside at hearings not required by statute when designated to do so by the Commission.

(c) *Unavailability.* If the presiding officer assigned to a proceeding becomes unavailable to the Commission, the Commission, or Chief Judge (if such presiding officer was an administrative law judge), shall designate a qualified officer to take his or her place. Any motion predicated upon the substitution of a new presiding officer for one originally designated shall be made within ten (10) days after notice of such substitution. [Rule 145.]

§502.146 Commencement of functions of Office of Administrative Law Judges.

In proceedings handled by the Office of Administrative Law Judges, its functions shall attach:

(a) Upon the service by the Commission of a complaint filed pursuant to §502.62; or

(b) Upon reference by the Commission of a petition for a declaratory order pursuant to §502.68; or

(c) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to §502.92; or

(d) Upon the initiation of a proceeding and ordering of hearing before an administrative law judge. [Rule 146.]

§502.147 Functions and powers.

(a) *Of presiding officer.* The officer designated to hear a case shall have authority to arrange and give notice of hearing; sign and issue subpenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order, except with regard to that portion of any order involving the Commission's suspension authority set forth in section 3, Intercoastal Shipping Act, 1933; inform the parties as to the availability of one or more alternative means of dispute resolution, encourage use of such methods, and require consideration of their use at an early stage of the proceeding; hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution; transmit the request of parties for the appointment of a mediator or settlement judge, as provided by §502.91 of this part; require the attendance at any such conference pursuant to 5 U.S.C. 556(c)(8), of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof and receive relevant material, reliable and probative evidence; act upon petitions to intervene; permit submission of facts, arguments, offers of settlement, and proposals of adjustment; and, if the parties so request, issue formal opinions providing tentative evaluations of

the evidence submitted; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge's decision thereon, except as otherwise provided by the rules in this part; act upon petitions for enlargement of time to file such documents, including answers to formal complaints; and dispose of any other matter that normally and properly arises in the course of proceedings. The presiding officer or the Commission may exclude any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

(b) All of the functions delegated in subparts A to Q of this part, inclusive, to the Chief Judge, presiding officer, or administrative law judge include the functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, pursuant to the provisions of section 105 of Reorganization Plan No. 7 of 1961. [Rule 147.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 58 FR 38650, July 19, 1993]

§ 502.148 Consolidation of proceedings.

The Commission or the Chief Judge (or designee) may order two or more proceedings which involve substantially the same issues consolidated and heard together. [Rule 148.]

§ 502.149 Disqualification of presiding or participating officer.

Any presiding or participating officer may at any time withdraw if he or she deems himself or herself disqualified, in which case there will be designated another presiding officer. If a party to a proceeding, or its representative, files a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Commission will determine the matter as a part of the record and decision in the case. [Rule 149.]

§ 502.150 Further evidence required by presiding officer during hearing.

At any time during the hearing, the presiding officer may call for further evidence upon any issue, and require such evidence where available to be presented by the party or parties concerned, either at the hearing or adjournment thereof. [Rule 150.]

§ 502.151 Exceptions to rulings of presiding officer unnecessary.

Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which it desires the presiding officer to take or its objection to an action taken, and its grounds therefor. [Rule 151.]

§ 502.152 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof. [Rule 152.]

§ 502.153 Appeal from ruling of presiding officer other than orders of dismissal in whole or in part.

(a) Rulings of the presiding officer may not be appealed prior to or during the course of the hearing, or subsequent thereto, if the proceeding is still before him or her, except where the presiding officer shall find it necessary to allow an appeal to the Commission to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party.

(b) Any party seeking to appeal must file a motion for leave to appeal no later than fifteen (15) days after written service or oral notice of the ruling in question, unless the presiding officer, for good cause shown, enlarges or shortens the time. Any such motion shall contain not only the grounds for leave to appeal but the appeal itself.

(c) Replies to the motion for leave to appeal and the appeal may be filed within fifteen (15) days after date of service thereof, unless the presiding officer, for good cause shown, enlarges or shortens the time. If the motion is

granted, the presiding officer shall certify the appeal to the Commission.

(d) Unless otherwise provided, the certification of the appeal shall not operate as a stay of the proceeding before the presiding officer.

(e) The provisions of § 502.10 shall not apply to this section. [Rule 153.]

§ 502.154 Rights of parties as to presentation of evidence.

Every party shall have the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The presiding officer shall, however, have the right and duty to limit the introduction of evidence and the examination and cross-examination of witnesses when in his or her judgment, such evidence or examination is cumulative or is productive of undue delay in the conduct of the hearing. [Rule 154.]

§ 502.155 Burden of proof.

At any hearing under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.67), the burden of proof to show that the new rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all cases, as prescribed by the Administrative Procedure Act, 5 U.S.C. 556(d), the burden shall be on the proponent of the rule or order. [Rule 155.]

[58 FR 58976, Nov. 5, 1993]

§ 502.156 Evidence admissible.

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. All other evidence shall be excluded. Unless inconsistent with the requirements of the Administrative Procedure Act and these Rules, the Federal Rules of Evidence, Public Law 93–595, effective July 1, 1975, will also be applicable. [Rule 156.]

§ 502.157 Written evidence.

(a) The use of written statements in lieu of oral testimony shall be resorted to where the presiding officer in his or her discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in its rebuttal shall be required to list the paragraphs to which it objects, giving an indication of its reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offeror draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The presiding officer shall fix respective dates for the exchange of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter, the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(b) Where a formal hearing is held in a rulemaking proceeding, interested persons will be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence properly verified, except that such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination. [Rule 157.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.158 Documents containing matter not material.

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced, unless the presiding officer

determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant. [Rule 158.]

§ 502.159 [Reserved]

§ 502.160 Records in other proceedings.

When any portion of the record before the Commission in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference. [Rule 160.]

§ 502.161 Commission's files.

Where any matter contained in a tariff, report, or other document on file with the Commission is offered in evidence, such document need not be produced or marked for identification, but the matter so offered shall be specified in its particularity, giving tariff number and page number of tariff, report, or document in such manner as to be readily identified, and may be received in evidence by reference, subject to comparison with the original document on file. [Rule 161.]

§ 502.162 Stipulations.

The parties may, by stipulation, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. It is desirable that facts be thus agreed upon whenever practicable. Writen stipulations shall be subscribed and shall be served upon all parties of record unless presented at the hearing or prehearing conference. A stipulation may be proposed even if not subscribed by all parties without prejudice to any nonsubscribing party's right to cross-examine and offer rebuttal evidence. [Rule 162.]

§ 502.163 Receipt of documents after hearing.

Documents or other writings to be submitted for the record after the close of the hearing will not be received in evidence except upon permission of the presiding officer. Such documents or other writings when submitted shall be accompanied by a statement that copies have been served upon all parties, and shall be received, except for good cause shown, not later than ten (10) days after the close of the hearing and not less than (10) days prior to the date set for filing briefs. Exhibit numbers will not be assigned until such documents are actually received and incorporated in the record. [Rule 163.]

§ 502.164 Oral argument at hearings.

Oral argument at the close of testimony may be ordered by the presiding officer in his or her discretion. [Rule 164.]

§ 502.165 Official transcript.

(a) The Commission will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, shall be filed with the Commission. Transcripts of testimony will be available in any proceeding under the rules in this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(b)(1) Section 11 of the Federal Advisory Committee Act provides that, except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings. As used in this section, ''agency proceeding'' means any proceeding as defined in 5 U.S.C. 551(12).

(2) The Office of Management and Budget has interpreted this provision as being applicable to proceedings before the Commission and its administrative law judges. (Guidelines, 38 FR 12851, May 16, 1973.)

(3) The Commission interprets section 11 and the OMB guidelines as follows:

(i) Future contracts between the Commission and the successfully bidding recording firm will provide that any party to a Commission proceeding or other interested person (hereinafter included within the meaning of ''party'') shall be able to obtain a copy of the transcript of the proceeding in which it is involved at the actual cost of duplication of the original transcript, which includes a reasonable amount for overhead and profit, except where it requests delivery of copies in a shorter period of time than is required for delivery by the Commission.

(ii) The Commission will bear the full expense of transcribing all of its administrative proceedings where it requests regular delivery service (as set forth in the Contract). In cases where the Commission requests daily delivery of transcript copies (as set forth in the Contract), any party may receive daily delivery service at the actual cost of duplication.

(iii)(A) Where the Commission does not request daily copy service, any party requesting such service must bear the incremental cost of transcription above the regular copy transcription cost borne by the Commission, in addition to the actual cost of duplication, except that where the party applies for and properly shows that the furnishing of daily copy is indispensible to the protection of a vital right or interest in achieving a fair hearing, the presiding officer in the proceeding in which the application is made shall order that daily copy service be provided the applying party at the actual cost of duplication, with the full cost of transcription being borne by the Commission.

(B) In the event a request for daily copy is denied by the presiding officer, the requesting party, in order to obtain daily copy, must pay the cost of transcription over and above that borne by the Commission, i.e., the incremental cost between that paid by the Commission when it requests regular copy and when it requests daily copy.

(C) The decision of the presiding officer in this situation is interpreted as falling within the scope of the functions and powers of the presiding officer, as defined in § 502.147(a). [Rule 165.]

§ 502.166 Corrections of transcript.

Motions made at the hearing to correct the record will be acted upon by the presiding officer. Motions made after the hearing to correct the record shall be filed with the presiding officer within twenty-five (25) days after the last day of hearing or any session thereof, unless otherwise directed by the presiding officer, and shall be served on all parties. Such motions may be in the form of a letter. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing. [Rule 166.]

§ 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the presiding officer may in his or her discretion order that the witness shall disclose such information only in the presence of those designated and sworn to secrecy by the presiding officer. The transcript of testimony shall be held confidential. Copies of said transcript need be served only upon the parties to whose representatives the information has been disclosed and upon such other parties as the presiding officer may designate. This rule is subject to the proviso that any information given pursuant thereto, may be used by the presiding officer or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 167.]

[55 FR 28400, July 11, 1990]

§ 502.168 Copies of data or evidence.

Every person compelled to submit data or evidence shall be entitled to retain or, on payment of proper costs, procure a copy of transcript thereof. [Rule 168.]

§ 502.169 Record of decision.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. [Rule 169.]

Subpart K—Shortened Procedure

§ 502.181 Selection of cases for shortened procedure; consent required.

By consent of the parties and with approval of the Commission or presiding officer, a complaint proceeding may be conducted under shortened procedure without oral hearing, except that a hearing may be ordered by the presiding officer at the request of any party or in his or her discretion. [Rule 181.]

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

A complaint filed with the Commission under this subpart shall have attached a memorandum of the facts, subscribed and verified according to § 502.112, and of arguments separately stated, upon which it relies. The original of each complaint with memorandum shall be accompanied by copies for the Commission's use. The complaint shall be accompanied by remittance of a $166 filing fee. [Rule 182.]

[49 FR 44369, Nov. 6, 1984, as amended at 59 FR 59170, Nov. 16, 1994]

§ 502.183 Respondent's answering memorandum.

Within twenty-five (25) days after date of service of the complaint, unless a shorter period is fixed, each respondent shall, if it consents to the shortened procedure provided in this subpart, serve upon complainant pursuant to subpart H of this part an answering memorandum of the facts, subscribed and verified according to § 502.112, and of arguments, separately stated, upon which it relies. The original of the answering memorandum shall be accompanied by a certificate of service as provided in § 502.114 and shall be accompanied by copies for the Commission's use. If the respondent does not consent to the proceeding being conducted under the shortened procedure provided in this subpart, the matter will be governed by subpart E of this part and the respondent shall file an answer under § 502.64. [Rule 183.]

§ 502.184 Complainant's memorandum in reply.

Within fifteen (15) days after the date of service of the answering memorandum prescribed in § 502.183, unless a shorter period is fixed, each complainant may file a memorandum in reply, subscribed and verified according to § 502.112, served as provided in § 502.114, and accompanied by copies for the Commission's use. This will close the record for decision unless the presiding officer determines that the record is insufficient and orders the submission of additional evidentiary materials. [Rule 184.]

§ 502.185 Service of memoranda upon and by interveners.

Service of all memoranda shall be made upon any interveners. Interveners shall file and serve memoranda in conformity with the provisions relating to the parties on whose behalf they intervene. [Rule 185.]

§ 502.186 Contents of memoranda.

The memorandum should contain concise arguments and fact, the same as would be offered if a formal hearing were held and briefs filed. If reparation is sought, paid freight bills should accompany complainant's original memorandum. [Rule 186.]

§ 502.187 Procedure after filing of memoranda.

An initial, recommended, or tentative decision will be served upon the parties in the same manner as is provided under § 502.225. Thereafter, the procedure will be the same as that in respect to proceedings after formal hearing. [Rule 187.]

Subpart L—Depositions, Written Interrogatories, and Discovery

§ 502.201 General provisions governing discovery.

(a) *Applicability.* The procedures described in this subpart are available in all adjudicatory proceedings under section 22 of the Shipping Act, 1916 and

the Shipping Act of 1984. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

(b) *Schedule of use*—(1) *Complaint proceedings.* Any party desiring to use the procedures provided in this subpart shall commence doing so at the time it files its initial pleading, e.g., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113.

(2) *Commission instituted proceedings.* All parties desiring to use the procedures provided in this subpart shall commence to do so within 30 days of the service of the Commission's order initiating the proceeding.

(3) *Commencement of discovery.* The requirement to commence discovery under paragraphs (b)(1) and (b)(2) of this section shall be deemed satisfied when a party serves any discovery request under this subpart upon a party or person from whom a response is deemed necessary by the party commencing discovery. A schedule for further discovery pursuant to this subpart shall be established at the conference of the parties pursuant to paragraph (d) of this section.

(c) *Completion of discovery.* Discovery shall be completed within 120 days of the service of the complaint or the Commission's order initiating the proceeding.

(d) *Duty of the Parties.* In all proceedings in which the procedures of this subpart are used, it shall be the duty of the parties to meet or confer within fifteen (15) days after service of the answer to a complaint or after service of the discovery requests in a Commission-instituted proceeding in order to: establish a schedule for the completion of discovery within the 120-day period prescribed in paragraph (c) of this section; resolve to the fullest extent possible disputes relating to discovery matters; and expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The schedule shall be submitted to the presiding officer not later than five (5) days after the conference. Nothing in this rule should be construed to preclude the parties from meeting or conferring at an earlier date.

(e) *Submission of status reports and requests to alter schedule.* The parties shall submit a status report concerning their progress under the discovery schedule established pursuant to paragraph (d) of this section not later than thirty (30) days after submission of such schedule to the presiding officer and at 30-day intervals thereafter, concluding on the final day of the discovery schedule, unless the presiding officer otherwise directs. Requests to alter such schedule beyond the 120-day period shall set forth clearly and in detail the reasons why the schedule cannot be met. Such requests may be submitted with the status reports unless an event occurs which makes adherence to the schedule appear to be impossible, in which case the requests shall be submitted promptly after occurrence of such event.

(f) *Conferences.* The presiding officer may at any time order the parties or their attorneys to participate in a conference at which the presiding officer may direct the proper use of the procedures of this subpart or make such orders as may be necessary to resolve disputes with respect to discovery and to prevent delay or undue inconvenience. When a reporter is not present and oral rulings are made at a conference held pursuant to this paragraph or paragraph (g) of this section, the parties shall submit to the presiding officer as soon as possible but within three (3) work days, unless the presiding officer grants additional time, a joint memorandum setting forth their mutual understanding as to each ruling on which they agree and, as to each ruling on which their understandings differ, the individual understandings of each party. Thereafter, the presiding officer shall issue a written order setting forth such rulings.

(g) *Resolution of disputes.* After making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes. Such rulings shall be made orally upon the record when feasible and/or by subsequent ruling in writing. If necessary to prevent undue delay or otherwise facilitate conclusion of the proceeding,

the presiding officer may order a hearing to commence before the completion of discovery.

(h) *Scope of examination.* Persons and parties may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(i) *Protective orders.* (1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(iv) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(v) That discovery may be conducted with no one present except persons designated by the presiding officer;

(vi) That a deposition after being sealed be opened only by order of the presiding officer;

(vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, under such other procedure the presiding officer may establish.

(j) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's responses to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement responses with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which such person is expected to testify, and the substance of the testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) the party knows that the response was incorrect when made, or (ii) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or by agreement of the parties, subject to the time limitations set forth in paragraph (c) of this section or established under paragraph (e) of this section. [Rule 201.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.202 Persons before whom depositions may be taken.

(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths under

the laws of the United States or of the place where the examination is held.

(b) *In foreign countries.* In a foreign country, depositions may be taken (1) on notice, before a person authorized to administer oaths in the place in which the examination is held, either under the law thereof or under the law of the United States, or (2) before a person commissioned by the Commission, and a person so commissioned shall have the power by virtue of his or her commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed ''To the Appropriate Authority in [here name the country].'' Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under the rules in this subpart. (See 22 CFR 92.49—92.66.)

(c) *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) *Waiver of objection.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence

(e) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. [Rule 202.]

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to such person and to every other party to the action, pursuant to subpart H of this part. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice shall also contain a statement of the matters concerning which each witness will testify.

(2) The attendance of witnesses may be compelled by subpena as provided in subpart I of this part. If a subpena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpena shall be attached to or included in the notice.

(3) All errors and irregularities in the notice or subpena for taking of a deposition are waived unless written objection is promptly served upon the party giving the notice.

(4) Examination and cross-examination of deponents may proceed as permitted at the hearing under the provisions of § 502.154.

(b) *Record of examination; oath; objections.* (1) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in his or her presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Objections shall be resolved at a discovery conference called under § 502.201(f) or, if

circumstances warrant, by such other procedure as the presiding officer may establish.

(2) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(3) The parties may stipulate or the presiding officer may upon motion order that a deposition be taken by telephone or other reliable device.

(c) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in paragraph (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

(d) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor, and the deposition may then be used as fully as though signed, unless upon objection, the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(e) *Certification and filing by officer; copies, notice of filing.* (1) The officer taking the deposition shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked ''Deposition of [here insert name of witness]'' and shall promptly file it with the Secretary of the Commission by hand or registered or certified mail.

(2) Interested parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and the exhibits.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(f) *Effect of errors and irregularities.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under this section and § 502.204 are waived unless a motion to suppress the deposition or some part thereof is made within ten (10) days of filing. [Rule 203.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 58 FR 27211, May 7, 1993]

§ 502.204 Depositions upon written interrogatories.

(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party pursuant to subpart H of this part with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter,

a party so served may serve cross interrogatories upon the party proposing to take the deposition. All errors and irregularities in the notice are waived unless written objection is promptly served upon the party giving the notice.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by paragraphs (b), (d) and (e) of §502.203 to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him or her.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties. [Rule 204.]

§502.205 Interrogatories to parties.

(a) *Service; answers.* (1) Any party may serve, pursuant to subpart H of this part, upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Any party desiring to serve interrogatories as provided by this section must comply with the applicable provisions of §502.201 and make service thereof on all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, on all parties to the proceeding under the schedule established pursuant to §502.201. The presiding officer, for good cause, may limit service of answers.

(b) *Objections to interrogatories.* All objections to interrogatories shall be resolved at the conference or meeting provided for under §502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to interrogatories shall be permitted only to the extent that the discovery schedule previously established under §502.201(d) is not delayed.

(c) *Scope, time, number and use.* (1) Interrogatories may relate to any matters which can be inquired into under §502.201(h), and the answers may be used to the same extent as provided in §502.209 for the use of the deposition of a party.

(2) Interrogatories may be sought after interrogatories have been answered, but the presiding officer, on motion of the deponent or the party interrogated, may make such protective order as justice may require.

(3) The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression.

(4) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to

make copies, compilations, abstracts or summaries. [Rule 205.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.206 Production of documents and things and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve, pursuant to subpart H of this part, on any other party a request (1) to produce and permit the party making the request, or someone acting on its behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, sound or video recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of § 502.203(a) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property of any designated object or operation thereon, within the scope of § 502.203(a).

(b) *Procedure.* The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Responses shall be served under the schedule established pursuant to § 502.201. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. Objections to requests for production of documents shall be resolved at the conference or meeting required under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to requests for production of documents shall be permitted only to the extent that the discovery schedule previously established under § 502.201(d) is not delayed. [Rule 206.]

§ 502.207 Requests for admission.

(a)(1) A party may serve, pursuant to subpart H of this part, upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of § 502.203(a) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Any party desiring to serve a request as provided by this section must comply with the applicable provisions of § 502.201.

(2)(i) Each matter of which an admission is requested shall be separately set forth.

(ii) The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the presiding officer may allow pursuant to § 502.201, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

(iii) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers

that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; a party may, subject to the provisions of § 502.207(c) deny the matter or set forth reasons why it cannot be admitted or denied.

(3) The party who has requested admissions may request rulings on the sufficiency of the answers or objections. Rulings on such requests shall be issued at a conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Unless the presiding officer determines that an objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this rule, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless the presiding officer on motion permits withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the presiding officer that withdrawal or amendment will be prejudicial in maintaining the party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under paragraph (a) of this section, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. Such application must be made to the presiding officer before issuance of the initial decision in the proceeding. The presiding officer shall make the order unless it is found that:

(1) The request was held objectionable pursuant to paragraph (a) of this section, or

(2) The admission sought was of no substantial importance, or

(3) The party failing to admit had reasonable ground to believe that it might prevail on the matter, or

(4) There was other good reason for the failure to admit. [Rule 207.]

§ 502.208 Use of discovery procedures directed to Commission staff personnel.

(a) Discovery procedures described in §§ 502.202, 502.203, 502.204, 502.205, 502.206, and 502.207, directed to Commission staff personnel shall be permitted and shall be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, shall be served on the Secretary of the Commission.

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under paragraph (a) of this section shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 208.]

§ 502.209 Use of depositions at hearings.

(a) *General.* At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States unless it appears that the absence of the witness was procured by the party offering the depositions; or

(iii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require introduction of all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to admissibility.* (1) Except as otherwise provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(2) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(3) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(4) Objections to the form of written interrogatories submitted under § 502.204 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross interrogatories.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person its own witness for any purpose by taking such person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(3) of this section. At the hearing, any party may rebut any relevent evidence contained in a deposition whether introduced by it or by any other party. [Rule 209.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.210 Refusal to comply with orders to answer or produce documents; sanctions; enforcement.

(a) *Sanctions for failure to comply with order.* If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereto, or rendering a judgement by default against the disobedient party.

(b) *Enforcement of orders and subpenas.* In the event of refusal to obey an order or failure to comply with a subpena, the Attorney General at the request of the Commission, or any party injured thereby may seek enforcement by a United States district court having jurisdiction over the parties. Any action with respect to enforcement of subpenas or orders relating to depositions, written interrogatories, or other discovery matters shall be taken within twenty (20) days of the date of refusal to obey or failure to comply. A private party shall advise the Commission five (5) days (excluding Saturdays, Sundays and legal holidays) before applying to the court of its intent to seek enforcement of such supenas and discovery orders.

(c) *Persons and documents located in a foreign country.* Orders of the presiding officer directed to persons or documents located in a foreign country shall become final orders of the Commission unless an appeal to the Commission is filed within ten (10) days after date of issuance of such orders or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no orders of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 210.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart M—Briefs; Requests for Findings; Decisions; Exceptions

§ 502.221 Briefs; requests for findings.

(a) The presiding officer shall fix the time and manner of filing briefs and any enlargement of time. The period of time allowed shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise.

(b) Briefs shall be served upon all parties pursuant to subpart H of this part.

(c) In investigations instituted on the Commission's own motion, the presiding officer may require the Bureau of Enforcement to file a request for findings of fact and conclusions within a reasonable time prior to the filing of briefs. Service of the request shall be in accordance with the provisions of subpart H of this part.

(d) Unless otherwise ordered by the presiding officer, opening or initial briefs shall contain the following matters in separately captioned sections: (1) Introductory section describing the nature and background of the case, (2) proposed findings of fact in serially numbered paragraphs with reference to exhibit numbers and pages of the transcript, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

(e) All briefs shall contain a subject index or table of contents with page references and a list of authorities cited.

(f) The presiding officer may limit the number of pages to be contained in a brief. [Rule 221.]

[49 FR 44369, Nov. 6, 1984, as amended at 61 FR 51233, Oct. 1, 1996]

§ 502.222 Requests for enlargement of time for filing briefs.

Requests for enlargement of time within which to file briefs shall conform to the requirements of § 502.102. Except for good cause shown, such requests shall be filed and served pursuant to subpart H of this part not later than five (5) days before the expiration of the time fixed for the filing of the briefs. [Rule 222.]

§ 502.223 Decisions—administrative law judges.

To the administrative law judges is delegated the authority to make and serve initial or recommended decisions. [Rule 223.]

§ 502.224 Separation of functions.

The separation of functions as required by 5 U.S.C. 554(d) shall be observed in proceedings under subparts A to Q inclusive, of this part. [Rule 224.]

§ 502.225 Decisions—contents and service.

All initial, recommended, and final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding. In proceedings involving overcharge claims, the presiding officer may, where appropriate, require that the carrier publish notice in its tariff of the substance of the decision. This provision shall also apply to decisions issued pursuant to subpart T of this part. [Rule 225.]

§ 502.226 Decision based on official notice; public documents.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body, provided, that where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(b) Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a state or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or relevant part thereof. [Rule 226.]

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

(a)(1) Within twenty-two (22) days after date of service of the initial decision, unless a shorter period is fixed under § 502.103, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate transcript page and exhibit number when referring to the record, and shall be served on all parties pursuant to subpart H of this part.

(2) Any adverse party may file and serve a reply to such exceptions within twenty-two (22) days after the date of service thereof, which shall contain appropriate transcript and exhibit references.

(3) Whenever the officer who presided at the reception of the evidence, or

other qualified officer, makes an initial decision, such decision shall become the decision of the Commission thirty (30) days after date of service thereof (and the Secretary shall so notify the parties), unless within such 30-day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed or a determination to review is made by the Commission on its own initiative.

(4) Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter.

(5) Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Commission shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties.

(6) The time periods for filing exceptions and replies to exceptions, prescribed by this section, shall not apply to proceedings conducted under §§502.67 and 502.75.

(b)(1) If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than twenty-two (22) days after service of the ruling on the motion in question.

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within twenty-two (22) days after the appeal is served.

(3) The denial of a petition to intervene or withdrawal of a grant of intervention shall be deemed to be a dismissal within the meaning of this paragraph.

(c) Whenever an administrative law judge orders dismissal of a proceeding in whole or in part, such order, in the absence of appeal, shall become the order of the Commission thirty (30) days after date of service of such order (and the Secretary shall so notify the parties), unless within such 30-day period the Commission decides to review such order on its own motion, in which case notice of such intention shall be served upon the parties.

(d) The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 227.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27211, May 7, 1993]

§502.228 Request for enlargement of time for filing exceptions and replies thereto.

Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of §502.102. Requests for extensions of these periods will be granted only under exceptional circumstances duly demonstrated in the request. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of such documents. Any enlargement of time granted will automatically extend by the same period the date for the filing of notice or review by the Commission. [Rule 228.]

§502.229 Certification of record by presiding or other officer.

The presiding or other officer shall certify and transmit the entire record to the Commission when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Commission that the initial decision will be reviewed on its own initiative, or (c) the Commission requires the case to be certified to it for initial decision. [Rule 229.]

§502.230 Reopening by presiding officer or Commission.

(a) *Motion to reopen.* At any time after the conclusion of a hearing in a proceeding, but before issuance by the presiding officer of a recommended or initial decision, any party to the proceeding may file with the presiding officer a motion to reopen the proceeding

for the purpose of receiving additional evidence. A motion to reopen shall be served in conformity with the requirements of subpart H and shall set forth the grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Reply.* Within ten (10) days following service of a motion to reopen, any party may reply to such motion.

(c) *Reopening by presiding officer.* At any time prior to filing his or her decision, the presiding officer upon his or her own motion may reopen a proceeding for the reception of further evidence.

(d) *Reopening by the Commission.* Where a decision has been issued by the presiding officer or where a decision by the presiding officer has been omitted, but before issuance of a Commission decision, the Commission may, after petition and reply in conformity with paragraphs (a) and (b) of this section, or upon its own motion, reopen a proceeding for the purpose of taking further evidence.

(e) *Remand by the Commission.* Nothing contained in this rule shall preclude the Commission from remanding a proceeding to the presiding officer for the taking of additional evidence or determining points of law. [Rule 230.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart N—Oral Argument; Submission for Final Decision

§ 502.241 Oral argument.

(a) The Commission may hear oral argument either on its own motion or upon the written request of a party. If oral argument before the Commission is desired on exceptions to an initial or recommended decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such a request irrespective of its filing exceptions under § 502.227. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition, or application, or in the reply thereto. If the Commission determines to hear oral argument, a notice will be issued setting forth the order of presentation and the amount of time allotted to each party.

(b)(1) Requests for oral argument will be granted or denied in the discretion of the Commission.

(2) Parties requesting oral argument shall set forth the specific issues they propose to address at oral argument.

(c) Those who appear before the Commission for oral argument shall confine their argument to points of controlling importance raised on exceptions or replies thereto. Where the facts of a case are adequately and accurately dealt with in the initial or recommended decision, parties should, as far as possible, address themselves in argument to the conclusions.

(d) Effort should be made by parties taking the same position to agree in advance of the argument upon those persons who are to present their side of the case, and the names of such persons and the amount of time requested should be received by the Commission not later than ten (10) days before the date set for the argument. The fewer the number of persons making the argument the more effectively can the parties' interests be presented in the time allotted. [Rule 241.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4144, Feb. 10, 1987]

§ 502.242 Submission to Commission for final decision.

A proceeding will be deemed submitted to the Commission for final decision as follows: (a) If oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions; (c) in the case of an initial decision, the date of notice of the Commission's intention to review the decision, if such notice is given. [Rule 242.]

§ 502.243 Participation of absent Commissioner.

Any Commissioner who is not present at oral argument and who is

otherwise authorized to participate in a decision shall participate in making that decision after reading the transcript of oral argument unless he or she files in writing an election not to participate. [Rule 243.]

Subpart O—Reparation

§ 502.251 Proof on award of reparation.

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought (See § 502.63), the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts. [Rule 251.]

§ 502.252 Reparation statements.

When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Exhibit No. 1 to this subpart, showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Commission. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the respondent or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Commission for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Commission, or in its discretion referred for further hearing. [Rule 252.]

§ 502.253 Inerest in reparation proceedings.

Except as to applications for refund or waiver of freight charges under § 502.92 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest granted on awards of reparation in complaint proceedings instituted under the Shipping Act of 1984, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, will accrue from the date of injury to the date specified in the Commission order awarding reparation. Compounding will be daily from the date of injury to the date specified in the Commission order awarding reparation. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission order.

(a) On awards of reparation granted under the Shipping Act of 1984, or the Shipping Act, 1916, interest shall be computed on the basis of the average monthly secondary market rate on six-month U.S.Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly U.S. Treasury bill rate at the date of the Commission order awarding reparation. The monthly secondary market rates on six-month U.S. Treasury bills for the reparation period will be summed up and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period.

(b) On refunds ordered under section 3(c)(2) and awards of reparation granted under section 4 of the Intercoastal Shipping Act, 1933 interest shall be computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System during the period to which the reparation applies. (Rule 253.)

[56 FR 47001, Sept. 17, 1991]

Pt. 502, Subpt O, Exh. I Attorney's fees in reparation proceedings.

(a) *Scope.* Except for proceedings under subpart S of this part, the Commission shall, upon petition, award the

complainant reasonable attorney's fees directly related to obtaining a reparations award in any complaint proceeding under section 11 of the Shipping Act of 1984. For purposes of this section, ''attorney's fees'' includes the fair market value of the services of any person permitted to appear and practice before the Commission in accordance with subpart B of this part, and may include compensation for services rendered the complainant in a related proceeding in Federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.

(b) *Content of petitions.* Petitons for attorney's fees under this section shall specify the number of hours claimed by each person representing the complainant at each identifiable stage of the proceeding, and shall be supported by evidence of the reasonableness of hours claimed and the customary fees charged by attorneys and associated legal representative in the community where the petitioner practices. Requests for additional compensation must be supported by evidence that the customary fees for the hours reasonably expended on the case would result in an unreasonable fee award.

(c) *Filing of petition.* (1) Petitions for attorney's fees shall be filed within 30 days of a final reparation award:

(i) With the presiding officer where the presiding officer's decision awarding reparations became administratively final pursuant to §502.227(a)(3) of this part; or

(ii) With the Commission, if exceptions were filed to, or the Commission reviewed, the presiding officer's reparation award decision pursuant to §502.227 of this part.

(2) For purposes of this section, a reparation award shall be considered final after a decision disposing of the merits of a complaint is issued and the time for the filing of court appeals has run or after a court appeal has terminated.

(d) *Replies to petitions.* Within 20 days of filing of the petition, a reply to the petition may be filed by the respondent, addressing the reasonableness of any aspect of the petitioner's claim. A respondent may also suggest adjustments to the claim under the criteria stated in paragraph (b) of this section.

(e) *Ruling on petitions.* Upon consideration of a petition and any reply thereto, the Commission or the presiding officer shall issue an order stating the total amount of attorney's fees awarded. The order shall specify the hours and rate of compensation found awardable and shall explain the basis for any additional adjustments. An award order shall be served within 60 days of the date of the filing of the reply to the petition or expiration of the reply period; except that in cases involving a substantial dispute of facts critical to the award determination, the Commission or presiding officer may hold a hearing on such issues and extend the time for issuing a fee award order by an additional 30 days. The Commission or the presiding officer may adopt a stipulated settlement of attorney's fees.

(f) In cases where the presiding officer issues an award order, appeal of that order and Commission review of that order in the absence of appeal shall be governed by the procedures of §502.227 of this part. [Rule 254.]

[52 FR 6331, Mar. 3, 1987, as amended at 58 FR 27211, May 7, 1993]

PT. 502, EXHIBIT NO. 1 TO SUBPART O [§ 502.252]—REPARATION STATEMENT TO BE FILED PURSUANT TO RULE 252

Claim of _____ under the decision of the Federal Maritime Commission in Docket No. _____.

Date of B/L	Date of delivery or tender of delivery	Date charges paid	Vessel	Voyage No.	Port of origin	Destination port	Route	Commodity	Weight or measurement	As charged		Should be		Reparation	Charges paid by*
										Rate	Amount	Rate	Amount		

*Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

Total amount of reparation $_____.

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _____.

_____ Steamship Company, Collecting Carrier Respondent,

By _____, Auditor

By _____, *Claimant*

_____, *Attorney*

(address and date)

Subpart P—Reconsideration of Proceedings

§ 502.261 Petitions for reconsideration and stay.

(a) Within thirty (30) days after issuance of a final decision or order by the Commission, any party may file a petition for reconsideration. Such petition shall be limited to 25 pages in length and shall be served in conformity with the requirements of subpart H of this part. A petition will be subject to summary rejection unless it:

(1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;

(2) Identifies a substantive error in material fact contained in the decision or order; or

(3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. A petition shall be verified if verification of the original pleading is required and shall not operate as a stay of any rule or order of the Commission.

(b) A petition for stay of a Commission order which directs the discontinuance of statutory violations will not be received.

(c) The provisions of this section are not applicable to decisions issued pursuant to subpart S of this part. [Rule 261.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27211, May 7, 1993]

§ 502.262 Reply to petition for reconsideration or stay.

Any party may file a reply in opposition to a petition for reconsideration or stay within fifteen (15) days after the date of service of the petition in accordance with § 502.74. The reply shall be limited to 25 pages in length and shall be served in conformity with subpart H of this part. [Rule 262.]

[58 FR 27211, May 7, 1993]

Subpart Q—Schedules and Forms

§ 502.271 Schedule of information for presentation in regulatory cases.

The following approved forms and illustrative wording for use in Commission proceedings appear in this part as follows:

(a) *Notice of appearance.* Exhibit No. 1 to Subpart B (following § 502.32).

(b) *Certification.* Certification of nondisclosure by persons requesting underlying data from carriers filing general rate increase or decrease (§ 502.67(a)(3)).

(c) *Complaint.* Exhibit No. 1 to Subpart E (following § 502.75).

(d) *Verification.* See complaint form in Exhibit No. 1 to Subpart E (following § 502.75).

(e) *Answer to complaint.* Exhibit No. 2 to Subpart E (following § 502.75).

(f) *Petition for leave to intevene.* Exhibit No. 3 to Subpart E (following § 502.75).

(g) *Special docket application.* Exhibit No. 1 to Subpart F (following § 502.95).

(h) *Certificate of service.* § 502.117 (Subpart H). See also § 502.320 for small claims.

(i) *Reparation statement.* Where the Commission finds reparation is due but that the amount cannot be ascertained: Exhibit No. 1 to Subpart O (following § 502.253).

(j) *Small claim form for informal adjudication.* Exhibit No. 1 to Subpart S (following § 502.305).

(k) *Respondent's consent form for informal adjudication.* Exhibit No. 2 to Subpart S (following § 502.305). [Rule 271.]

Subpart R—Nonadjudicatory Investigations

§ 502.281 Investigational policy.

The Commission has extensive regulatory duties under the various acts it is charged with administering. The conduct of investigations is essential to the proper exercise of the Commission's regulatory duties. It is the purpose of this subpart to establish procedures for the conduct of such investigations which will insure protection of the public interest in the proper and effective administration of the law. The Commission encourages voluntary cooperation in its investigations where such can be effected without delay or

without prejudice to the public interest. The Commission may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law. [Rule 281.]

§502.282 Initiation of investigations.

Commission inquiries and nonadjudicatory investigations are originated by the Commission upon its own motion when in its discretion the Commission determines that information is required for the purposes of rulemaking or is necessary or helpful in the determination of its policies or the carrying out of its duties, including whether to institute formal proceedings directed toward determining whether any of the laws which the Commission administers have been violated. [Rule 282.]

§502.283 Order of investigation.

When the Commission has determined that an investigation is necessary, an Order of Investigation shall be issued. [Rule 283.]

§502.284 By whom conducted.

Investigations are conducted by Commission representatives designated and duly authorized for the purpose. (See §502.25.) Such representatives are authorized to exercise the duties of their office in accordance with the laws of the United States and the regulations of the Commission, including the resort to all compulsory processes authorized by law, and the administration of oaths and affirmances in any matters under investigation by the Commission. [Rule 284.]

§502.285 Investigational hearings.

(a) Investigational hearings, as distinguished from hearings in adjudicatory proceedings, may be conducted in the course of any investigation undertaken by the Commission, including inquiries initiated for the purpose of determining whether or not a person is complying with an order of the Commission.

(b) Investigational hearings may be held before the Commission, one or more of its members, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be stenographically reported and a transcript thereof shall be made a part of the record of investigation. [Rule 285.]

§502.286 Compulsory process.

The Commission, or its designated representative may issue orders or subpenas directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Such orders and subpenas shall be served in the manner provided in §502.134. [Rule 286.]

§502.287 Depositions.

The Commission, or its duly authorized representative, may order testimony to be taken by deposition in any investigation at any stage of such investigation. Such depositions may be taken before any person designated by the Commission having the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his or her direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and be deposed and to produce evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence as provided in §502.131. [Rule 287.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§502.288 Reports.

The Commission may issue an order requiring a person to file a report or answers in writing to specific questions relating to any matter under investigation. [Rule 288.]

§502.289 Noncompliance with investigational process.

In case of failure to comply with Commission investigational processes, appropriate action may be initiated by the Commission, including actions for enforcement by the Commission or the Attorney General and forfeiture of penalties or criminal actions by the Attorney General. [Rule 289.]

§ 502.290 Rights of witness.

Any person required to testify or to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the depositions, as reduced to writing by or under the direction of the person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter or right, otherwise participate in the investigation. [Rule 290.]

§ 502.291 Nonpublic proceedings.

Unless otherwise ordered by the Commission, all investigatory proceedings shall be nonpublic. [Rule 291.]

Subpart S—Informal Procedure for Adjudication of Small Claims

§ 502.301 Statement of policy.

(a) Section 11(a) of the Shipping Act of 1984 permits any person to file a complaint with the Commission claiming a violation occurring in connection with the foreign commerce of the United States and to seek reparation for any injury caused by that violation.

(b) Section 22 of the Shipping Act, 1916, permits any person to file a complaint against any common carrier by water in interstate and offshore domestic commerce or against any other person subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, claiming a violation of those statutes and to seek reparation for that violation.

(c) With the consent of both parties, claims filed under this subpart in the amount of $10,000 or less will be referred to the Commission's Informal Dockets Activity for adjudication and decision by its Settlement Officers without the necessity of formal proceedings under the rules of this part.

(d) Determination of claims under this subpart shall be administratively final and conclusive. [Rule 301.]

§ 502.302 Limitations of actions.

(a) Claims alleging violations of the Shipping Act of 1984 must be filed within three years from the time the cause of action accrues.

(b) Claims alleging violations of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, must be filed within two years from the time the cause of action arises.

(c) A claim is deemed filed on the date it is received by the Commission. [Rule 302.]

§ 502.303 [Reserved]

§ 502.304 Procedure and filing fee.

(a) A sworn claim under this subpart shall be filed in the form prescribed in Exhibit No. 1 to this subpart. Three (3) copies of this claim must be filed, together with the same number of copies of such supporting documents as may be deemed necessary to establish the claim. Copies of tariff pages need not be filed; reference to such tariffs or to pertinent parts thereof will be sufficient. Supporting documents may consist of affidavits, correspondence, bills of lading, paid freight bills, export declarations, dock or wharf receipts, or of such other documents as, in the judgment of the claimant, tend to establish the claim. The Settlement Officer may, if deemed necessary, request additional documents or information from claimants. Claimant may attach a memorandum, brief or other document containing discussion, argument, or legal authority in support of its claim. If a claim filed under this subpart involves any shipment which has been the subject of a previous claim filed with the Commission, formally or informally, full reference to such previous claim must be given.

(b) Claims under this subpart shall be addressed to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573. Such claims shall be accompanied by remittance of a $68 filing fee.

(c) Each claim under this subpart will be acknowledged with a reference to the Informal Docket Number assigned. The number shall consist of a numeral(s) followed by capital ''I'' in parentheses. All further correspondence pertaining to such claims must

refer to the assigned Informal Docket Number. If the documents filed fail to establish a claim for which relief may be granted, the parties affected will be so notified in writing. The claimant may thereafter, but only if the period of limitation has not run, resubmit its claim with such additional proof as may be necessary to establish the claim. In the event a complaint has been amended because it failed to state a claim upon which relief may be granted, it will be considered as a new complaint.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Settlement Officer on the respondent involved.

(e) Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate refusal or consent in its response will be conclusively deemed to indicate such consent. The response shall consist of documents, arguments, legal authorities, or precedents, or any other matters considered by the respondent to be a defense to the claim. The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.

(f) If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under §502.311 and will be adjudicated under subpart T of this part.

(g) Both parties shall promptly be served with the Settlement Officer's decision which shall state the basis upon which the decision was made. Where appropriate, the Settlement Officer may require that the respondent publish notice in its tariff of the substance of the decision. This decison shall be final, unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(h) Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in paragraph (g) of this section will recommence. [Rule 304.]

[49 FR 44369, Nov. 6, 1984, as amended at 59 FR 59170, Nov. 16, 1994]

§502.305 Applicability of other rules of this part.

Except as specifically provided in this subpart, the Rules in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 305.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

EXHIBIT NO. 1 TO SUBPART S [§502.304(a)]—SMALL CLAIM FORM FOR INFORMAL ADJUDICATION AND INFORMATION CHECKLIST

Federal Maritime Commission, Washington, DC.

Informal Docket No.———

(Claimant)

vs.

(Respondent)

I. The claimant is [state in this paragraph whether claimant is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

II. The respondent named above is [state in this paragraph whether respondent is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in subpart S (46 CFR 502.301–502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

(Date)

(Claimant's signature)

(Claimant's address)

(Signature of agent or attorney)

(Agent's or attorney's address)

Verification

State of ———, County of ———, ss: ———, being first duly sworn on oath deposes and says that he or she is

The claimant [or if a firm, association, or corporation, state the capacity of the affiant] and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ——— 19—. (Seal)

(Notary Public)

My Commission expires, ———

Information To Assist in Filing Informal Complaints

Informal Docket procedures are limited to claims of $10,000 or less and are appropriate only in instances when an evidentiary hearing on disputed facts is not necessary. Where, however, a respondent elects not to consent to the informal procedures [See Exhibit No. 2 to subpart S], the claim will be adjudicated by an administrative law judge under subpart T of Part 502.

Under the Shipping Act of 1984 [for foreign commerce], the claim must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of claimant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the claim must be filed within two (2) years from the time the cause of action accrues and may only be brought against a ''person subject to the Act'', e.g., a common carrier, terminal operator or freight forwarder.

A violation of a specific section of a particular shipping statute must be alleged.

The format of Exhibit No. 1 must be followed and a verification must be included. (See §§502.21–502.32, 502.112, and 502.304.) An original and two (2) copies of the claim *and all attachments*, including a brief in support of the claim, must be submitted.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 55 FR 28400, July 11, 1990]

EXHIBIT NO. 2 TO SUBPART S [§502.304(e)]—RESPONDENT'S CONSENT FORM FOR INFORMAL ADJUDICATION

Federal Maritime Commission, Washington, DC.

Informal Docket No. ———

Respondent's Affidavit

I authorize the Settlement Officer to determine the above-numbered claim in accordance with subpart S (46 CFR 502) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission Review.

(Date) ———————————

(Signed) ———————————

(Capacity) ———————————

Verification

State of ———, County of ———, ss: ———, being first duly sworn on oath deposes and says that he or she is ———, (Title or Position) and is the person who signed the foregoing and agrees without qualification to its truth.

———————————

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ———, 19—.

(Seal)

———————————

(Notary Public)

My Commission expires. ———————

Certificate of Service [See §502.320]

Subpart T—Formal Procedure for Adjudication of Small Claims

§502.311 Applicability.

In the event the respondent elects not to consent to determination of the claim under subpart S of this part, it shall be adjudicated by the administrative law judges of the Commission under procedures set forth in this subpart, if timely filed under §502.302. The previously assigned Docket Number shall be used except that it shall now be followed by capital ''F'' instead of ''I'' in parentheses (See §502.304(c)). The complaint shall consist of the documents submitted by the claimant under subpart S of this part. [Rule 311.]

§502.312 Answer to complaint.

The respondent shall file with the Commission an answer within twenty-five (25) days of service of the complaint and shall serve a copy of said answer upon complainant. The answer shall admit or deny each matter set forth in the complaint. Matters not specifically denied will be deemed admitted. Where matters are urged in defense, the answer shall be accompanied by appropriate affidavits, other documents, and memoranda. [Rule 312.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§502.313 Reply of complainant.

Complainant may, within twenty (20) days of service of the answer filed by respondent, file with the Commission and serve upon the respondent a reply memorandum accompanied by appropriate affidavits and supporting documents. [Rule 313.]

§502.314 Additional information.

The administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent. [Rule 314.]

§502.315 Request for oral hearing.

In the usual course of disposition of complaints filed under this subpart, no oral hearing will be held, but, the administrative law judge, in his or her discretion, may order such hearing. A request for oral hearing may be incorporated in the answer or in complainant's reply to the answer. Requests for oral hearing will not be entertained unless they set forth in detail the reasons why the filing of affidavits or other documents will not permit the fair and expeditious disposition of the claim, and the precise nature of the facts sought to be proved at such oral hearing. The administrative law judge shall rule upon a request for oral hearing within ten (10) days of its receipt. In the event an oral hearing is ordered, it will be held in accordance with the rules applicable to other formal proceedings, as set forth in subparts A through Q of this part. [Rule 315.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§502.316 Intervention.

Intervention will ordinarily not be permitted. [Rule 316.]

§ 502.317 Oral argument.

No oral argument will be held unless otherwise directed by the administrative law judge. [Rule 317.]

§ 502.318 Decision.

(a) The decision of the administrative law judge shall be final, unless, within twenty-two (22) days from the date of service of the decision, either party requests review of the decision by the Commission, asserting as grounds therefor that a material finding of fact or a necessary legal conclusion is erroneous or that prejudicial error has occurred, or unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 318.]

(b) If the complainant is awarded reparations pursuant to section 11 of the Shipping Act of 1984, attorney's fees shall also be awarded in accordance with § 502.254 of this part. [Rule 318.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 6332, Mar. 3, 1987]

§ 502.319 Date of service and computation of time.

The date of service of documents served by the Commission shall be that which is shown in the service stamp thereon. The date of service of documents served by parties shall be the date when the matter served is mailed or delivered in person, as the case may be. When the period of time prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation. [Rule 319.]

§ 502.320 Service.

All claims, resubmitted claims, petitions to intervene and rulings thereon, notices of oral hearings, notices of oral arguments (if necessary), decisions of the administrative law judge, notices of review, and Commission decisions shall be served by the administrative law judge or the Commission. All other pleadings, documents and filings shall, when tendered to the Commission, evidence service upon all parties to the proceeding. Such certificate shall be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by [mailing, delivering to courier, or delivering in person], a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

Dated at ——— this ——— day of ———, 19—.

(Signature) ———————————————

(For) ———————————————

[Rule 320.]

§ 502.321 Applicability of other rules of this part.

Except as specifically provided in this subpart, rules in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 321.]

Subpart U—Conciliation Service

§ 502.401 Definitions.

For purposes of this subpart:

(a) *Disputes* means disagreements between two or more parties arising from the transportation of goods or the performance of services in connection with such transportation in the domestic offshore commerce or the foreign commerce of the United States; a difference of opinion regarding the interpretation of any tariff, rate, rule, or regulation; a disagreement regarding the performance of any service in connection with such transportation; a disagreement with respect to an alleged violation of the shipping statutes; and other disagreement or opposing opinion regarding any matter connected with transportation of cargoes in the waterborne commerce of the United States. This definition is limited to those disputes which fall within the jurisdiction of the Federal Maritime Commission.

(b) *Shipping statutes* means the Shipping Act of 1984, 46 U.S.C. app. 1701–1720; Shipping Act, 1916, 46 U.S.C. app. 801 et seq.; Merchant Marine Act, 1936, 46 U.S.C. app. 1101 et seq.; Merchant Marine Act, 1920, 46 U.S.C. app. 861 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 et seq.; and amendments of and Acts relating to the foregoing, to the extent of the Federal Maritime Commission's jurisdiction under such Acts.

(c) *Advisory opinions* means non-binding conclusions reached by a conciliator on the basis of oral presentation and/or documentary authority.

(d) *Domestic offshore commerce* means waterborne common carriage between:

(1) The Continental United States and Alaska or Hawaii;

(2) Alaska and Hawaii;

(3) The United States or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(4) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession or district; and

(5) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia); and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. chapter 105.

(e) *Foreign commerce* means waterborne common carriage between the United States or any of its territories, commonwealths, districts or possessions, and a foreign country. [Rule 401.]

§ 502.402 Policy.

It is the policy of the Federal Maritime Commission:

(a) To offer its good offices and expertise to parties to disputes involving matters within its jurisdiction, so as to permit resolution of such disputes with dispatch and without the necessity of costly and time-consuming formal proceedings;

(b) To facilitate and promote the resolution of problems and disputes by encouraging affected parties to resolve differences through their own resources;

(c) To create a forum in which grievances, interpretations, problems, and questions involving the waterborne commerce of the United States may be aired, discussed and, hopefully, resolved to the mutual advantage of all concerned parties. [Rule 402.]

§ 502.403 Persons eligible for service.

Request for conciliation service may be made by any shipper, shippers' association, merchant, carrier, conference of carriers, freight forwarder, marine terminal operator, Government agency, or any other person affected by or involved in the transportation of goods by common carrier in the waterborne domestic offshore or foreign commerce of the United States. [Rule 403.]

§ 502.404 Procedure and fee.

(a) The request for conciliation should be addressed to the Federal Maritime Commission Conciliation Service, Washington, DC 20573, and should contain the details of the dispute, names and addresses of all involved parties, the contentions of each party or parties, and copies of any documents that are relevant to the disposition of the issues. If the request is made by any one party to the dispute, the party requesting conciliation should mail or deliver to the other party or parties to the dispute a copy of the letter of request, with attachments, if any. The request shall be accompanied by remittance of a $61 service fee.

(b) Each matter will be assigned a number prefixed by the letters FMCCS and assigned to a conciliator for disposition and the involved parties will be informed of the case number and the name of the conciliator.

(c) While it is preferable that all parties involved in a dispute request a service jointly, a request by a single party for the service will be acted upon, provided all parties agree that the dispute should be conciliated. In the event that the request is made by only one party, the conciliator will contact the other party or parties to the dispute and be advised as to whether such parties agree to participate in the conciliation. If the other party or parties to the dispute do not agree to

the Conciliation Service, no further action will be taken by the conciliator and the conciliation ceases.

(d) The parties will be free to determine the best procedures to be used with the qualification that the conciliator may disapprove procedures that would in his or her opinion be either too time-consuming or involve inordinate expense to the Federal Maritime Commission. The parties may agree to (1) fix a time and place for the oral presentation of each party's contention; and (2) request affidavits, documents, or other materials that could help resolve the dispute. The conciliator will be in a strictly advisory capacity. There will be no written record of the conciliation discussions.

(e) Participation in the conciliation of a dispute is purely voluntary at all stages and the parties involved may withdraw at any time without prejudice. [Rule 404.]

[49 FR 44369, Nov. 6, 1984, as amended at 59 FR 59170, Nov. 16, 1994]

§ 502.405 Assignment of conciliator.

The Secretary of the Commission, giving due regard to the type and complexity of the problem presented and the degree of expertise required, will assign a conciliator to each dispute. [Rule 405.]

§ 502.406 Advisory opinion.

(a) The conciliator will write an advisory opinion that must meet the approval of all parties. If the advisory opinion, or revision thereof requested by one or more of the parties, is not unanimously agreed upon, then the conciliation will cease, without prejudice to any of the parties involved. If unanimity is not reached, the conciliator will note in a report to the Commission, which shall be served on all parties, that the parties failed to reach agreement. Only if unanimity is reached will the informal advisory opinion, although not binding, be sent to all interested parties and be made available to the public.

(b) There will be no appeal from, or review of, such opinions and any party may pursue any further course of action under any other rule or statute that it deems advisable. [Rule 406.]

Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

SOURCE: 52 FR 28264, July 29, 1987, unless otherwise noted.

§ 502.501 General provisions.

(a) *Purpose.* The Equal Access to Justice Act, 5 U.S.C. 504 (''EAJA''), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Federal Maritime Commission (''the Commission''). An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When EAJA applies.* EAJA applies to any adversary adjudication:

(1) Pending or commenced before the Commission on or after August 5, 1985;

(2) Commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 502.502 of this subpart, has been filed with the Commission within 30 days after August 5, 1985; or

(3) Pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

(c) *Proceedings covered.* (1)(i) EAJA applies to adversary adjudications conducted by the Commission under this part. These are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of any agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Any proceeding in which the Commission may prescribe a lawful present or future rate is not covered by the Act.

(iii) Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications.''

(2) The Commission's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(3) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(d) *Eligibility of applicants.* (1) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term ''party'' is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this section and § 502.502.

(2) The types of eligible applicants are:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(3) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(4) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(5) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(6) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(7) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) *Standards for awards.* (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on agency counsel.

(2) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(f) *Allowable fees and expenses.* (1) Awards will be based on rates customarily charged by the persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) No award for the fee of an attorney or agent under this subpart may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

(g) *Awards against other agencies.* If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 502.502 Information required from applicants.

(a) *Contents of petition.* (1) An application for an award of fees and expenses under EAJA shall be by petition under § 502.69 of this part, shall clearly indicate that the application is made under EAJA, and shall identify the applicant and the proceeding (including docket number) for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(2) The petition shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(3) The petition shall state the amount of fees and expenses for which an award is sought.

(4) The petition may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(5) The petition shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written

verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) *Net worth exhibit.* (1) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its petition a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 502.501(d)(6) of this subpart) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(2) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act under §§ 503.31–503.43 of this chapter.

(c) *Documentation of fees and expenses.* The petition shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reinbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When a petition may be filed.* (1) A petition may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(2) For purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have

been finally determined pursuant to the appeal.

§ 502.503 Procedures for considering petitions.

(a) *Filing and service of documents.* (1) Any petition for an award or other pleading or document related to a petition shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 502.502(b)(2) (confidential financial information).

(2) The petition and all other pleadings or documents related to the petition will be referred to an Administrative Law Judge to initially decide the matter as adjudicative officer.

(b) *Reply to petition.* (1) Within 30 days after service of a petition, counsel representing the agency against which an award is sought may file a reply to the petition. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file a reply within the 30-day period may be treated as a consent to the award requested.

(2) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing a reply for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(3) The reply shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the reply is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Response to reply.* Within 15 days after service of a reply, the applicant may file a response. If the response is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the response either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on a reply, within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded in accordance with the rules of this subpart pertaining to settlement. If a prevailing party and agency counsel agree on a proposed settlement of an award before a petition is filed, the petition shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The adjudicative officer shall serve an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reason for the allocation made.

(h) *Commission review.* Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with § 502.227 of this part. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* (1)(i) An applicant seeking payment of an award shall submit to the comptroller or other disbursing officer of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

(ii) The agency will pay the amount awarded to the applicant within 60 days.

(2) Where the Federal Maritime Commission is the paying agency, the application for payment of award shall be submitted to: Office of Budget and Financial Management, Federal Maritime Commission, Washington, DC 20573.

Subpart W—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

SOURCE: 49 FR 44418, Nov. 6, 1984, unless otherwise noted. Redesignated at 58 FR 27211, May 7, 1993.

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 32 of the Shipping Act, 1916, section 19 of the Merchant Marine Act, 1920, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89–777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act, 1916, the Merchant Marine Act, 1920, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, Public Law 89–777, and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

§ 502.602 Definitions.

For the purposes of this subpart:

(a) *Assessment* means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) *Commission* means the Federal Maritime Commission.

(c) *Compromise* means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal, docketed proceeding.

(d) *Mitigation* means the reduction, in whole or in part, of the amount of a civil penalty.

(e) *Person* includes individuals, corporations, partnerships, and associations existing under or authorized by

the laws of the United States or of a foreign country.

(f) *Respondent* means any person charged with a violation.

(g) *Settlement* means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(h) *Violation* includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; sections 19(6)(d), 19(7)(d) and 19(11) of the Merchant Marine Act, 1920; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89–777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Merchant Marine Act, 1920, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, or Public Law 89–777.

(i) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but which are in the same general class. The word ''and'' includes ''or'', except where specifically stated or where the context requires otherwise.

§ 502.603 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for hearing. Civil penalty assessment proceedings, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in this part. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. Such proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 502.604(e).

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

(a) *Scope.* Except in pending civil penalty assessment proceedings provided for in § 502.603, the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a registered or certified Notice and Demand Letter (''NDL'') to the respondent. The NDL will describe specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NDL also will state the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a NDL provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in §502.603(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such compromise agreement is set forth as appendix A to this subpart.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a duplicate original of the executed agreement shall be furnished to the respondent.

(2) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this subpart is delegated to the Director, Bureau of Enforcement.

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 61 FR 51233, Oct. 1, 1996]

§502.605 Payment of penalty: Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made as follows:

(1) By bank cashier's check or other instrument acceptable to the Commission;

(2) Upon execution of a promissory note containing a confess-judgment agreement, by periodic regular installments, with interest where appropriate, by bank cashier's check or other instrument acceptable to the Commission; or

(3) By combination of the alternatives in paragraphs (a) (1) and (2) of this section.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under §502.603, or compromised and agreed to under §502.604, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such defaulting respondent is a licensed freight forwarder, such default also may be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

APPENDIX A TO SUBPART W—EXAMPLE OF COMPROMISE AGREEMENT TO BE USED UNDER 46 CFR 502.604

Compromise Agreement

FMC File No. _____

This Agreement is entered into between:

(1) the Federal Maritime Commission, hereinafter referred to as Commission, and

(2) _____, hereinafter referred to as Respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against Respondent for the recovery of civil penalties provided under the [appropriate statute], for alleged violations of section _____;

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by Respondent, to wit:

[General description of practices and dates or time period involved]

Whereas, the Commission has authority under the Shipping Act of 1984 and the Shipping Act, 1916, to compromise and collect civil penalties; and,

Whereas, Respondent has terminated the practices which are the basis for the allegations of violation set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate these practices by Respondent, its officers, directors or employees.

Now Therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations, Respondent and the Commission hereby agree upon the following terms and conditions of compromise and settlement:

1. Respondent shall make a monetary payment to the Commission herewith, by bank cashier's check, in the total amount of $_____.

2. Upon acceptance in writing of this Agreement by the Director of the Bureau of Enforcement of the Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claim for recovery of civil penalties from the Respondent arising from the alleged violations set forth above.

3. It is expressly understood and agreed that this Agreement is not, and is not to be construed as, an admission by Respondent to the alleged violations set forth above.

(Respondent's Name)
By: _____
Title: _____
Date: _____

Approval and Acceptance

The above terms, conditions and consideration are hereby approved and accepted:

By the Federal Maritime Commission:

Director, Bureau of Enforcement
Date: _____

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 61 FR 51233, Oct. 1, 1996]

Subpart X—Paperwork Reduction Act

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement:

Section	Current OMB control no.
502.27 (Form FMC.12)	3072–0001

[49 FR 44369, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993]

PART 503—PUBLIC INFORMATION

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AUTHORITY: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted.

Subpart A—General

§503.1 Statement of policy.

(a) The Chairman of the Federal Maritime Commission is responsible for the effective administration of the provisions of Public Law 89–487, as amended. The Chairman shall carry out this responsibility through the program and the officials as hereinafter provided in this part.

(b) In addition, the Chairman, pursuant to his responsibility, hereby directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information, records, decisions or submittals in accordance with the provisions of §503.31.

Subpart B—Publication in the Federal Register

§503.11 Materials to be published.

(a) The Commission shall separately state and concurrently publish the following materials in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of its central and field organization and the established places at which the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(5) Every amendment, revision, or repeal of the foregoing.

(b) The Commission's publication with respect to paragraph (a)(1) of this

section has been and shall continue to be by publication in the FEDERAL REGISTER of the Rules and Regulations, Commission Order No. 1 (Amended), and amendments and supplements thereto.

(c) The Commission's publications with respect to paragraphs (a)(2), (a)(3), and (a)(4) of this section, including amendments, revisions, and repeals, have been and shall continue to be by publication in the FEDERAL REGISTER as part of the Code of Federal Regulations, title 46, chapter IV.

§ 503.12 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the FEDERAL REGISTER and not so published.

§ 503.13 Incorporation by reference.

For purposes of this subpart, matter which is reasonably available to the class of persons affected hereby shall be deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Office of the FEDERAL REGISTER.

[49 FR 44401, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart C—Commission Opinions and Orders

§ 503.21 Public records.

(a) The Commission shall, in accordance with this part, make the following materials available for public inspection and copying:

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by the Commission.

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(b) To prevent unwarranted invasion of personal privacy, the Commission may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each case, explain in writing the justification for the deletion.

§ 503.22 Current index.

The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by subpart B of this part to be made available or published. The index shall be available at the Office of the Secretary, Washington, DC 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor made in accordance with subpart D of this part.

§ 503.23 Effect of noncompliance.

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited, as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

Subpart D—Procedure Governing Availability of Commission Records—Freedom of Information Act

§ 503.31 Records available at the Office of the Secretary.

The following records are available for inspection and copying at the Federal Maritime Commission, Office of the Secretary, Washington, DC 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(a) Proposed and final rules and regulations of the Commission including general substantive rules and statements of policy and interpretations.

(b) Rules of Practice and Procedure.

(c) Reports of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings and pertinent correspondence.

(d) Official docket files (transcripts, exhibits, briefs, etc.) in all formal proceedings,[1] except for materials which are the subject of a protective order.

(e) Correspondence to or from the Commission or Administrative Law Judges concerning docketed proceedings.

(f) Press releases.

(g) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly announces the results of such deliberations.

(h) Annual reports of the Commission.

[55 FR 38329, Sept. 18, 1990]

§503.32 Records generally available.

The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary:

(a) Agreements filed and in effect pursuant to section 15 of the Shipping Act, 1916 and sections 5 and 6 of the Shipping Act of 1984.

(b) Agreements filed under section 15 of the Shipping Act, 1916 and section 5 of the Shipping Act of 1984 which have been noticed in the FEDERAL REGISTER.

(c) Tariffs filed under the provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Shipping Act of 1984.

(d) Terminal tariffs filed pursuant to part 514 of this chapter.

(e) List of certifications of financial responsibility pertaining to Public Law 89–777.

(f) List of licensed ocean freight forwarders.

[49 FR 44401, Nov. 6, 1984, as amended at 55 FR 38330, Sept. 18, 1990; 60 FR 27229, May 23, 1995]

§503.33 Other records available upon written request under the Freedom of Information Act.

(a) A member of the public who requests permission to inspect, copy or be provided with any Commission records not described in §§503.31 and 503.32 shall:

(1) Submit such request in writing to the Secretary, Federal Maritime Commission, Washington, DC 20573. Any such request shall be clearly marked on the exterior with the letters FOIA; and

(2) Reasonably describe the record or records sought.

(b) The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of §§503.34 and 503.35.

[55 FR 38330, Sept. 18, 1990]

§503.34 Procedures on requests for documents.

(a) *Determination of compliance with requests for documents.* (1) Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Secretary within ten (10) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request.

(3) The Secretary shall immediately notify the party making such request of the determination made, the reasons therefor, and, in the case of a denial of such request, shall notify the party of its right to appeal that determination to the Chairman.

(b) *Appeals from adverse determination (denial of request).* (1) Any party whose request for documents or other information pursuant to this part has been

[1] Copies of transcripts may be purchased from the reporting company contracted for by the Commission. Contact the Office of the Secretary for the name and address of this company.

denied in whole or in part by the Secretary may appeal such determination. Any such appeal shall be addressed to: Chairman, Federal Maritime Commission, Washington, DC 20573, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Secretary in the case of a total denial of the request, or within a reasonable time following request, or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Secretary, the Chairman of the Federal Maritime Commission, or the Chairman's specific delegate in his or her absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of paragraph 4 of subsection (a) of the FOIA (Pub. L. 93–502, 88 Stat. 1561–1562, November 21, 1974) regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances, as specified in this paragraph, the time limits prescribed with respect to initial actions or actions on appeal may be extended by written notice from the Secretary of the Commission to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days. As used in this paragraph, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by Commission to meet the time limitation.* Failure by the Commission either to deny or grant any request for documents within the time limits prescribed by FOIA (5 U.S.C. 552, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

[49 FR 44401, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 503.35 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records shall not be available:

(1) Records specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive order.

(2) Records related solely to the internal personnel rules and practices of the Commission. Such records relate to

those matters which are for the guidance of Commission personnel with respect to their employment with the Federal Maritime Commission.

(3) Records specifically exempted from disclosure by statute.

(4) Information given in confidence. This includes information obtained by or given to the Commission which constitutes trade secrets, confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(5) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission, the Secretary, and the General Counsel, regarding the preparation of Commission orders and decisions, other documents received or generated in the process of issuing an order, decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy. This exemption includes all personnel and medical records and all private, personal, financial, or business information contained in other files which, if disclosed to the public, would invade the privacy of any person, including members of the family of the person to whom the information pertains.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

(c) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

[49 FR 44401, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 52 FR 13682, Apr. 24, 1987]

§ 503.36 Commission report of actions.

On or before March 1 of each calendar year, the Federal Maritime Commission shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. This report shall include:

(a) The number of determinations made by the Federal Maritime Commission not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reasons for the action upon each appeal that results in a denial of information.

(c) The name and title or position of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of FOIA, as amended November 21, 1974, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Commission implementing the provisions of the FOIA, as amended November 21, 1974.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer fully the provisions of the FOIA, as amended.

Subpart E—Fees

§ 503.41 Policy and services available.

Pursuant to policies established by Congress, the Government's costs for services provided to identifiable persons are to be recovered by the payment of fees (Independent Offices Appropriations Act, 31 U.S.C. 9701 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552). Except as otherwise noted, it is the general policy of the Commission not to waive or reduce service and filing fees contained in this chapter. In extraordinary situations, the Commission will accept requests for waivers or fee reductions. Such requests are to be made to the Secretary of the Commission at the time of the information request or the filing of documents and must demonstrate that the waiver or reduction of a fee is in the best interest of the public, or that payment of a fee would impose an undue hardship. The Secretary will notify the requestor of the decision to grant or deny the request for waiver or reduction.

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed; except that no fees shall be assessed for search, duplication or review in connection with requests for single copies of materials described in §§ 503.11 and 503.21:

(1) Records/documents search.

(2) Duplication of records/documents.

(3) Review of records/documents.

(4) Cerification of copies of records/documents.

(b) Fees shall also be assessed for the following services provided by the Commission:

(1) Subscriptions to Commission publications.

(2) Placing one's name, as an interested party, on the mailing list of a docketed proceeding.

(3) Processing nonattorney applications to practice before the Commission.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 13682, Apr. 24, 1987; 59 FR 59170, Nov. 16, 1994]

§ 503.42 Payment of fees and charges.

The fees charged for special services may be paid through the mail by check, draft, or postal money order, payable to the Federal Maritime Commission, except for charges for transcripts of hearings. Transcripts of hearings, testimony and oral argument are furnished by a nongovernmental contractor, and may be purchased directly from the reporting firm.

§ 503.43 Fees for services.

(a) *Definitions.* The following definitions apply to the terms when used in this subpart:

(1) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Search for material will be done in the most efficient and least expensive manner so as to minimize

costs for both the agency and the requester. Search is distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(2) *Duplication* means the process of making a copy of a document necessary to respond to a Freedom of Information Act or other request. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review* means the process of examining documents located in response to a commerical use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the agency must determine the use to which a requester will put the documents requested. Where the agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency will seek additional clarification before assigning the request to a specific category.

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) *Non-commercial scientific institution* means an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. *Freelance* journalists, may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(8) *Direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(b) *General.* (1) The basic fees set forth in paragraph (c) of this section provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee.

Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(2) The fees for search, duplication and review set forth in paragraph (c) of this section reflect the full allowable direct costs expected to be incurred by the agency for the service. Costs of search and review may be assessed even if it is determined that disclosure of the records is to be withheld. Cost of search may be assessed even if the agency fails to locate the records. Requesters much reasonably describe the records sought. The following restrictions, limitations and guidelines apply to the assessment of such fees:

(i) For commercial use requesters, charges recovering full direct costs for search, review and duplication of records will be assessed.

(ii) For educational and non-commercial scientific institution requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) For representative of the news media requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages.

(iv) For all other requesters, no charge will be assessed for review of records. Charges recovering full direct costs for search and duplication of records will be assessed excluding charges for the first 100 pages of duplication and the first two hours of search time. Requests from individuals for records about themselves, filed in a Commission system of records, will be treated under the fee provisions of the Privacy Act of 1984 which permit fees only for duplication.

(v) No fee may be charged for search, review or duplication if the costs of routine collection and processing of the fee are likely to exceed the amount of the fee.

(vi) Documents shall be furnished without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a waiver or reduction of charges is appropriate the following factors will be taken into consideration.

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(vii) Whenever it is anticipated that fees chargeable under this section will exceed $25.00 and the requester has not indicated in advance a willingness to pay fees as high as anticipated, the requester will be notified of the amount of the anticipated fee. In such cases the requester will be given an opportunity

to confer with Commission personnel with the object of reformulating the request to meet the needs of the requester at a lower cost.

(viii) Interest may be charged record requesters who fail to pay fees assessed. Assessment of interest may begin on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billings. Receipt of payment by the agency will stay the accrual of interest.

(ix) Whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly. Multiple requests on unrelated subjects will not be aggregated.

(x) The agency may require a requester to make advance payment only when:

(A) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the requester will be required to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester; or

(B) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, in which case, the agency will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(xi) Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies where appropriate to encourage payment.

(xii) Whenever action is taken under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, the administrative time limits prescribed in subsection (a)(6) of 5 U.S.C. 552 (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits will begin only after the Commission has received fee payments described above.

(c) *Charges for search, review, duplication and certification.* (1) Records search will be performed by Commission personnel at the following rates:

(i) Search will be performed by clerical/administrative personnel at a rate of $15.00 per hour and by professional/executive personnel at a rate of $30.00 per hour.

(ii) Minimum charge for record search is $15.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of $63.00 per hour. Charges for review will be assessed only for initial review to determine the applicability of a specific exemptions to a particular record. No charge will be assessed for review at the administrative appeal level.

(3) Charges for duplication of records and documents will be assessed as follows, limited to size 8½″ x 14″ or smaller:

(i) If performed by requesting party, at the rate of five cents per page (one side).

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $15.00 per hour.

(iii) Minimum charge for copying is $3.50.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $70.00 for each certification.

(d) Annual subscriptions to Commission publications for which there are regular mailing lists are available at the charges indicated below for calendar year terms. Subscriptions for periods of less than a full calendar year will be prorated on a quarterly basis. No provision is made for refund upon

cancellation of subscription by a purchaser.

(1) Orders, notices, rulings, and decisions (initial and final) issued by Administrative Law Judges and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of $278.

(2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of $223.

(3) General rules and regulations of the Commission are available at the following rates: (i) Initial set including all current regulations for a fee of $83, and (ii) an annual subscription rate of $6 for all amendments to existing regulations and any new regulations issued.

(4) *Exceptions.* No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of the above Commission publications individually requested in person or by mail. In addition, a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(i) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(ii) The recipient is another governmental agency, Federal, State, or local, concerned with the domestic or foreign commerce by water of the United States or, having a legitimate interest in the proceedings and activities of the Commission.

(iii) The recipient is a college or university.

(iv) The recipient does not fall within paragraphs (d)(4) (i), (ii), or (iii) of this section but is determined by the Commission to be appropriate in the interest of its programs.

(e) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $7 per proceeding.

(f) Loose-leaf reprint of the Commission's complete, current Rules of Practice and Procedure, part 502 of this chapter, for an initial fee of $9. Future amendments to the reprint are available at an annual subscription rate of $7.

(g) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $77 pursuant to § 502.27 of this chapter.

(h) Additional issuances, publications and services of the Commission may be made available for fees to be determined by the Secretary which fees shall not exceed the cost to the Commission for providing them.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 13683, Apr. 24, 1987; 59 FR 59170, Nov. 16, 1994]

Subpart F—Information Security Program

§ 503.51 Definitions.

(a) *Original classification* means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, together with a classification designation signifying the level of protection required.

(b) *Derivative classification* means a determination that information is in substance the same as information currently classified, and the application of the same classification markings.

(c) *Declassification date or event* means a date or event upon which classified information is automatically declassified.

(d) *Downgrading date or event* means a date or event upon which classified information is automatically downgraded in accordance with appropriate downgrading instructions on the classified materials.

(e) *National security* means the national defense or foreign relations of the United States.

(f) *Foreign government information* means either information provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or information produced by the United States pursuant to or as a result of a

joint arrangement with a foreign government or governments, an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

§503.52 Senior agency official.

The Chairman of the Commission shall designate a senior agency official to be the Security Officer for the Commission who shall be responsible for directing and administering the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356.

§503.53 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Security Officer with the following responsibilities:

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 12356, and Information Security Oversight Office Directive No. 1. The program shall include initial, refresher, and termination briefings;

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons;

(c) Act on all suggestions and complaints concerning the Commission's information security program;

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 12356; and

(e) Consider and decide other questions concerning classification and declassification that may be brought before it.

§503.54 Original classification.

(a) No Commission Member or employee has the authority to classify any Commission originated information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in §503.51(f), the Member or employee shall immediately notify the Security Officer and appropriately protect the information.

(c) If the Security Officer believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority.

§503.55 Derivative classification.

(a) Any document that includes paraphrases, restatements, or summaries of, or incorporates in new form, information that is already classified, shall be assigned the same level of classification as the sources, unless consultation with originators or instructions contained in authorized classification guides indicate that no classification, or a lower classification than originally assigned, should be used.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions, and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) A derivative document that derives its classification from the approved use of the classification guide of another agency shall bear the declassification date required by the provisions of that classification guide.

(d) Documents classified derivatively on the basis of source documents or classification guides shall bear all applicable marking prescribed in sections 2001.5(a) through 2001.5(e), Information

Security Oversight Office Directive No. 1.

(1) *Classification authority.* The authority for classification shall be shown as follows:

(i) *Classified by (description of source documents or classification guide), or*

(ii) *Classified by multiple sources,* if a document is classified on the basis of more than one source document or classification guide.

(iii) In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked ''Classified by Multiple Sources'' shall cite the source document in its ''Classified by'' line rather than the term ''Multiple sources.''

(2) *Declassification and downgrading instructions.* Date or events for automatic declassification or downgrading, or the notation ''Originating Agency's Determination Required'' to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on ''declassify on'' line as follows:

''Declassify on: (date, description of event); or

''Originating Agency's Determination Required (OADR).''

§ 503.56 General declassification policy.

(a) The Commission exercises declassification and downgrading authority in accordance with section 3.1 of Executive Order 12356, only over that information originally classified by the Commission under previous Executive orders. Declassification and downgrading authority may be exercised by the Commission Chairman and the Commission Security Officer, and such others as the Chairman may designate. Commission personnel may not declassify information originally classified by other agencies.

(b) The Commission does not now have original classification authority nor does it have in its possession any documents that it originally classified when it had such authority. The Commission has authorized the Archivist of the United States to automatically declassify information originally classified by the Commission and under its exclusive and final declassification jurisdiction at the end of 20 years from the date of original classification.

§ 503.57 Mandatory review for declassification.

(a) Information originally classified by the Commission shall be subject to a review for declassification by the Commission, if:

(1) A request is made by a United States citizen or permanent resident alien, a federal agency, or a state or local government; and

(2) A request describes the documents or material containing the information with sufficient specificity to enable the Commission to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(b) Requests for mandatory declassification reviews of documents originally classified by the Commission shall be in writing, and shall be sent to the Security Officer, Federal Maritime Commission, Washington, DC 20573.

(c) If the request requires the provision of services by the Commission, fair and equitable fees may be charged under title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C 483a.

(d) Requests for mandatory declassification reviews shall be acknowledged by the Commission within 15 days of the date of receipt of such requests.

(e) If the document was originally classified by the Commission, the Commission Security Officer shall forward the request to the Chairman of the Commission for a determination of whether the document should be declassified.

(f) If the document was derivatively classified by the Commission or originally classified by another agency, the request, the document, and a recommendation for action shall be forwarded to the agency with the original classification authority. The Commission may, after consultation with the

originating agency, inform the requester of the referral.

(g) If a document is declassified in its entirety, it may be released to the requester, unless withholding is otherwise warranted under applicable law. If a document or any part of it is not declassified, the Security Officer shall furnish the declassified portions to the requester unless withholding is otherwise warranted under applicable law, along with a brief statement concerning the reasons for the denial of the remainder, and the right to appeal that decision to the Commission within 60 days.

(h) If a declassification determination cannot be made within 45 days, the requester shall be advised that additional time is needed to process the request. Final determination shall be made within one year from the date of receipt unless there are unusual circumstances.

(i) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12356, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12356.

§503.58 Appeals of denials of mandatory declassification review requests.

(a) Within 60 days after the receipt of denial of a request for mandatory declassification reveiw, the requester may submit an appeal in writing to the Commission through the Secretary, Federal Maritime Commission, Washington, DC 20573. The appeal shall:

(1) Identify the document in the same manner in which it was identified in the original request;

(2) Indicate the dates of the request and denial, and the expressed basis for the denial; and

(3) State briefly why the document should be declassified.

(b) The Commission shall rule on the appeal within 30 days of receiving it. If additional time is required to make a determination, the Commission shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Commission shall notify the requester in writing of the final determination and the reasons for any denial.

(c) A determination by the Commission under paragraph (b) of this section is final and no further administrative appeal will be permitted. However, the requester may be informed that suggestions and complaints concerning the information security program prescribed by Executive Order 12356 may be submitted to the Director, Information Security Oversight Office, GSA(AT), Washington, DC 20540.

§503.59 Safeguarding classified information.

(a) All classified information shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

(b) Whenever classified material is removed from a storage facility, such material shall not be left unattended and shall be protected by attaching an appropriate classified document cover sheet to each classified document.

(c) Classified information being transmitted from one Commission office to another shall be protected with a classified document cover sheet and hand delivered by an appropriately cleared person to another appropriately cleared person.

(d) Classified information shall be made available to a person only when the possessor of the classified information has determined that the person seeking the classified information has a valid security clearance at least commensurate with the level of classification of the information and has established that access is essential to the accomplishment of authorized and lawful Government purposes.

(e) The requirement in paragraph (d) of this section, that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes, may be waived as provided in paragraph (f) of this section for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policymaking positions to which they were appointed by the President.

(f) Waivers under paragraph (e) of this section may be granted when the Commission Security Officer:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is properly safeguarded; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(g) Persons seeking access to classified information in accordance with paragraphs (e) and (f) of this section must agree in writing:

(1) To be subject to a national security check;

(2) To protect the classified information in accordance with the provisions of Executive Order 12356; and

(3) Not to publish or otherwise reveal to unauthorized persons any classified information.

(h) Except as provided by directives issued by the President through the National Security Council, classified information that originated in another agency may not be disseminated outside the Commission.

(i) Only appropriately cleared personnel may receive, transmit, and maintain current access and accountability records for classified material.

(j) Each office which has custody of classified material shall maintain:

(1) A classified document register or log containing a listing of all classified holdings, and

(2) A classified document destruction register or log containing the title and date of all classified documents that have been destroyed.

(k) An inventory of all documents classified higher than confidential shall be made at least annually and whenever there is a change in classified document custodians. The Commission Security Officer shall be notified, in writing, of the results of each inventory.

(l) Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(m) Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to the combination; whenever a combination has been subject to possible compromise; whenever the equipment is taken out of service; and at least once each year. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. One copy of the record of each combination shall be provided to the Commission Security Officer.

(n) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. The Commission Security Officer shall conduct periodic inspections to determine if the procedural safeguards prescribed in this subpart are in effect at all times.

(o) Whenever classified material is to be transmitted outside the Commission, the custodian of the classified material shall contact the Commission Security Officer for preparation and receipting instructions. If the material is to be hand carried, the Security Officer shall ensure that the person who will carry the material has the appropriate security clearance, is knowledgeable of safeguarding requirements, and is briefed, if appropriate, concerning restrictions with respect to carrying classified material on commercial carriers.

(p) Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access to it, to include securing it in approved equipment or facilities, whenever it is not under the direct supervision of authorized persons.

(q) Employees of the Commission shall be subject to appropriate sanctions, which may include reprimand, suspension without pay, removal, termination of classification authority,

loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation, if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 12356 or predecessor orders;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12356 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 12356 or implementing directive.

(r) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to his or her supervisor and the Commission Security Officer, who shall conduct an immediate inquiry into the matter.

(s) Questions with respect to the Commission Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Commission Security Officer.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

Subpart G—Access to Any Record of Identifiable Personal Information

§503.60 Definitions.

For the purpose of this subpart:

(a) *Agency* means each authority of the government of the United States as defined in 5 U.S.C. 551(1) and shall include any executive department, military department, government corporation, government controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(b) *Commission* means the Federal Maritime Commission.

(c) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence to whom a record pertains.

(d) *Maintain* includes maintain, collect, use, or disseminate.

(e) *Person* means any person not an individual and shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(f) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Federal Maritime Commission, including but not limited to a person's education, financial transactions, medical history, and criminal or employment history, and that contains the person's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(g) *Routine use* means [with respect to the disclosure of a record], the use of such records for a purpose which is compatible with the purpose for which it was collected.

(h) *Statistical record* means a record in a system of records, maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, but shall not include matter pertaining to the Census as defined in 13 U.S.C. 8.

(i) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§503.61 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Commission shall not disclose any record which is contained in a system of records, by any means of communication, to any person or other agency who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Commission may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Commission may

disclose any such record, provided such disclosure is:

(1) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C 552);

(3) For a routine use;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of title 13 U.S.C.;

(5) To a recipient who has provided the Commission with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States, as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; —

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Secretary of the Commission specifying the particular record and the law enforcement activity for which it is sought;

(8) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee, subcommittee, or joint committee of Congress;

(9) To the Comptroller General, or any authorized representative, thereof, in the course of the performance of the duties of the GAO; or

(10) Under an order of a court of competent jurisdiction.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.62 Accounting of disclosures.

(a) The Secretary shall make an accounting of each disclosure of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and 552a(c)(2).

(b) Except for a disclosure made under § 503.61(c)(7), the Secretary shall make the accounting described in paragraph (a) of this section available to any individual upon written request made in accordance with § 503.63(b) or § 503.63(c).

(c) The Secretary shall make reasonable efforts to notify the individual when any record which pertains to such individual is disclosed to any person under compulsory legal process, when such process becomes a matter of public record.

§ 503.63 Request for information.

(a) Upon request, in person or by mail, made in accordance with the provisions of paragraph (b) or (c) of this section, any individual shall be informed whether or not any Commission system of records contains a record pertaining to him or her.

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 and shall:

(1) Provide information sufficient, in the opinion of the Secretary, to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card or medicare card;

(3) Complete and sign the appropriate form provided by the Secretary.

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 and shall include in such request the following:

(1) Information sufficient in the opinion of the Secretary to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) A signed notarized statement to verify his or her identity.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§503.64 Commission procedure on request for information.

Upon request for information made in accordance with §503.63, the Secretary or his or her delegate shall, within 10 days (excluding Saturdays, Sundays, and legal public holidays), furnish in writing to the requesting party notice of the existence or nonexistence of any records described in such request.

§503.65 Request for access to records.

(a) *General.* Upon request by any individual made in accordance with the procedures set forth in paragraph (b) of this section, such individual shall be granted access to any record pertaining to him or her which is contained in a Commission system of records. However, nothing in this section shall allow an individual access to any information compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a record pertaining to him or her in person or by mail in accordance with paragraphs (b) (1) and (2) of this section:

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 and shall:

(i) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card, or medicare card; and

(ii) Complete and sign the appropriate form provided by the Secretary.

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, and shall include therein a signed notarized statement to verify his or her identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his or her own choosing, while reviewing the record requested. If an individual elects to be so accompanied, he or she shall notify the Secretary of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the acompanying person. Failure to so notify the Secretary in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *Commission determination of requests for access.* (1) Upon request made in accordance with this section, the Secretary or his or her delegate shall:

(i) Determine whether or not such request shall be granted;

(ii) Make such determination and provide notification within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such request, and, if such request is granted shall:

(iii) Notify the individual that fees for reproducing copies will be made in accordance with §503.69.

(2) If access to a record is denied because such information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, or for any other reason, the Secretary shall notify the individual of such determination and his or her right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making such request shall notify the Secretary whether the records requested are to be copied and mailed to the individual.

(2) If records are to be made available for personal inspection, the individual shall arrange with the Secretary a mutually agreeable time and place for inspection of the record.

(3) Fees for reproducing and mailing copies of records will be made in accordance with §503.69.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§503.66 Amendment of a record.

(a) *General.* Any individual may request amendment of a record pertaining to him or her according to the procedure in paragraph (b) of this section.

(b) *Procedures for requesting amendment of a record.* After inspection of a record pertaining to him or her, an individual may file with the Secretary a request, in person or by mail, for amendment of a record. Such request shall specify the particular portions of

the record to be amended, the desired amendments and the reasons therefor.

(c) *Commission procedures on request for amendment of a record.* (1) Not later than ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of a request made in accordance with this section to amend a record in whole or in part, the Secretary or his or her delegate shall:

(i) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(ii) Inform the individual, by certified mail, return receipt requested, of refusal to amend the record, setting out the reasons therefor, and notify the individual of his or her right to appeal that determination to the Chairman of the Commission under § 503.67.

(2) The Secretary shall inform any person or other agency to whom a record has been disclosed of any correction or notation of dispute made by the Secretary with respect to such records, in accordance with 5 U.S.C. 552a(c)(4) referring to amendment of a record, if an accounting of such disclosure has been made.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.67 Appeals from denial of request for amendment of a record.

(a) *General.* An individual whose request for amendment of a record pertaining to him or her is denied, may further request a review of such determination in accordance with paragraph (b) of this section.

(b) *Procedure for appeal.* Not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) following receipt of notification of refusal to amend, an individual may file an appeal to amend the record. Such appeal shall:

(1) Be addressed to the Chairman, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573; and

(2) Specify the reasons for which the refusal to amend is challenged.

(c) *Commission procedure on appeal.* (1) Upon appeal from a denial to amend a record, the Chairman of the Commission or the officer designated by the Chairman to act in his or her absence, shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than thirty (30) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(2) The Chairman shall also notify the individual of the provisions of 5 U.S.C. 552a(g)(1)(A) regarding judicial review of the Chairman's determination.

(3) If, on appeal, the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the Commission's determination.

(d) The Chairman, or his or her delegate in his or her absence, may extend up to thirty (30) days the time period prescribed in paragraph (c)(1) of this section within which to make a determination on an appeal from refusal to amend a record for the reasons that a fair and equitable review cannot be completed within the prescribed time period.

§ 503.68 Exemptions.

(a) The system of records designated FMC–25 Inspector General File is exempt from the provisions of 5 U.S.C. 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11) and (i) to the extent it contains information meeting the criteria of 5 U.S.C. 552a(j)(2) pertaining to the enforcement of criminal laws. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(b) The following systems of records are exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f), which otherwise require the Commission, among other things, to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. The scope of the exemptions and the reasons therefor are

described for each particular system of records.

(1) *FMC–1 Personnel Security File.* All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.

(2) *FMC–7 Licensed Ocean Freight Forwarders File.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(3) *FMC–22 Investigatory Files.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(4) *FMC–24 Informal Inquiries and Complaint Files.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasion of personal privacy of third parties.

(5) *FMC–25 Inspector General File.* (i) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(ii) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent the disclosure would reveal the identity of a source who furnished information to the Commission under the promises of confidentiality. Exemption is required to honor promises of confidentiality.

(6) *FMC–26 Administrative Grievance File.* (i) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes, Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(ii) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualification for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.

[59 FR 15636, Apr. 4, 1994]

§ 503.69 Fees.

(a) *General.* The following Commission services are available, with respect to requests made under the provisions of this subpart, for which fees will be charged as provided in paragraphs (b) and (c) of this section:

(1) Copying records/documents.

(2) Certification of copies of documents.

(b) *Fees for services.* The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) The copying of records and documents will be available at the rate of five cents per page (one side), limited to size 8¼'' x 14'' or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $70 for each certification.

(c) *Payment of fees and charges.* The fees charged for special services may be paid by check, draft, or postal money order, payable to the Federal Maritime Commission.

[49 FR 44401, Nov. 6, 1984, as amended at 59 FR 59171, Nov. 16, 1994]

Subpart H—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

§ 503.70 Policy.

It is the policy of the Federal Maritime Commission, under the Provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b, Sept. 13, 1976) to entitle the public to the fullest practicable information regarding the decisional processes of the Commission. The provisions of this subpart set forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of the Commission in carrying out its responsibilities under the shipping statutes administered by this Commission.

§ 503.71 Definitions.

The following definitions apply for purposes of this subpart:

(a) *Agency* means the Federal Maritime Commission;

(b) *Information pertaining to a meeting* means, but is not limited to the following: the record of any agency vote taken under the provisions of this subpart, and the record of the vote of each member; a full written explanation of any agency action to close any portion of any meeting under this subpart; lists of persons expected to attend any meeting of the agency and their affiliation; public announcement by the agency under this subpart of the time, place, and subject matter of any meeting or portion of any meeting; announcement of whether any meeting or portion of any meeting shall be open to public observation or be closed; any announcement of any change regarding any meeting or portion of any meeting; and the name and telephone number of the Secretary of the agency who shall be designated by the agency to respond to requests for information concerning any meeting or portion of any meeting;

(c) *Meeting* means the deliberations of at least three of the members of the agency which determine or result in the joint conduct of disposition of official agency business, but does not include:

(1) Individual member's consideration of official agency business circulated to the members in writing for disposition on notation;

(2) Deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in §§ 503.74 and 503.75;

(3) Deliberations by the agency in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting or series of meetings as provided in § 503.80; or

(4) Deliberations pertaining to any change in any meeting or to changes in the public announcement of such a meeting as provided in § 503.83;

(d) *Member* means each individual Commissioner of the agency;

(e) *Person* means any individual, partnership, corporation, association, or public or private organization, other than an agency as defined in 5 U.S.C. 551(1));

(f) *Series of meetings* means more than one meeting involving the same particular matters and scheduled to be held no more than thirty (30) days after the initial meeting in such series.

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75 and 503.76, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

(b) The opening of a portion or portions of a meeting or a portion or portions of a series of meetings to public observation shall not be construed to include any participation by the public in any manner in the meeting. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the agency.

§503.73 Exceptions—meetings.

Except in a case where the agency finds that the public interest requires otherwise, the provisions of §503.72(a) shall not apply to any portion or portions of an agency meeting or portion or portions of a series of meetings where the agency determined under the provisions of §503.74 or §503.75 that such portion or portions of such meeting or series of meetings is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of any agency;

(c) Disclose matters specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§503.74 Procedures for closing a portion or portions of a meeting or a portion or portions of a series of meetings on agency initiated requests.

(a) Any member of the agency, the Managing Director or the General Counsel of the agency may request that any portion or portions of a series of meetings be closed to public observation for any of the reasons provided in §503.73 by submitting such request in writing to the Secretary of the agency in sufficient time to allow the Secretary to schedule a timely vote on the request pursuant to paragraph (b) of this section.

(b) Upon receipt of any request made under paragraph (a) of this section, the

Secretary of the agency shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later then eight (8) days prior to the scheduled meeting of the agency.

(c) At the time the Secretary schedules a time for an agency vote as described in paragraph (b) of this section, he or she shall forward the request to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(d) At the time scheduled by the Secretary as provided in paragraph (b) of this section, the members of the agency, upon consideration of the request submitted under paragraph (a) of this section and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting may be closed to public observation for any of the reasons provided in § 503.73, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in § 503.73 permitting the closing of any meeting to public observation.

(e) In the case of a vote on a request under this section to close to public observation a portion or portions of a meeting, no such portion or portions of any meeting may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a meeting by recorded vote.

(f) In the case of a vote on a request under this section to close to public observation a portion or portions of a series of meetings as defined in § 503.71, no such portion or portions of a series of meetings may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a series of meetings. A determination to close to public observation a portion or portions of a series of meetings may be accomplished by a single vote on each of the issues described in paragraph (d) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

[49 FR 44401, Nov. 6, 1984, as amended at 55 FR 38330, Sept. 18, 1990]

§ 503.75 Procedures for closing a portion of a meeting on request initiated by an interested person.

(a) Any person as defined in § 503.71, whose interests may be directly affected by a portion of a meeting of the agency, may request that the agency close that portion of a meeting for the reason that matters in deliberation at that portion of the meeting are such that public disclosure of that portion of a meeting is likely to:

(1) Involve accusing any person of a crime, or formally censuring any person;

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; or

(3) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(b) Any person described in paragraph (a) of this section who submits a request that a portion of a meeting be closed shall submit an original and 15 copies of that request to the Secretary, Federal Maritime Commission, Washington, DC 20573, and shall state with

particularity that portion of a meeting sought to be closed and the reasons therefor as described in paragraph (a) of this section.

(c) Upon receipt of any request made under paragraphs (a) and (b) of this section, the Secretary of the agency shall:

(1) Furnish a copy of the request to each member of the agency; and

(2) Furnish a copy of the request to the General Counsel of the agency.

(d) Upon receipt of a request made under paragraphs (a) and (b) of this section, any member of the agency may request agency action upon the request to close a portion of a meeting by notifying the Secretary of the agency of that request for agency action.

(e) Upon receipt of a request for agency action under paragraph (d) of this section, the Secretary of the agency shall schedule a time for an agency vote upon the request of the person whose interests may be directly affected by a portion of a meeting, which vote shall take place prior to the scheduled meeting of the agency.

(f) At the time the Secretary receives a request for agency action and schedules a time for an agency vote as described in paragraph (e) of this section, the request of the person whose interests may be directly affected by a portion of a meeting shall be forwarded to the General Counsel of the agency who shall act upon such request as provided in §503.77.

(g) At the time scheduled by the Secretary, as provided in paragraph (e) of this section, the members of the agency, upon consideration of the request of the person whose interests may be directly affected by a portion of a meeting submitted under paragraphs (a) and (b) of this section, and consideration of the certified opinion of the General Counsel of the agency provided to the members under §503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting or portion or portions of a series of meetings may be closed to public observation for any of the reasons provided in paragraph (a) of this section, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in paragraph (a) of this section permitting the closing of any portion of any meeting to public observation.

(h) In the case of a vote on a request under this section to close to public observation a portion of a meeting, no such portion of a meeting may be closed unless, by a vote on the issues described in paragraph (g) of this section, a majority of the entire membership of the agency shall vote to close such portion of a meeting by a recorded vote.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§503.76 Effect of vote to close a portion or portions of a meeting or series of meetings.

(a) Where the agency votes as provided in §503.74 or §503.75, to close to public observation a portion or portions of a meeting or a portion or portions of a series of meetings, the portion or portions of a meeting or the portion or portions of a series of meetings shall be closed.

(b) Except as otherwise provided in §§503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under §503.74 or §503.75, by which it is determined to close a portion or portions of a meeting or a portion or portions of a series of meetings to public observation, the Secretary shall make available to the public:

(1) A written copy of the recorded vote reflecting the vote of each member of the agency;

(2) A full written explanation of the agency action closing that portion or those portions to public observation; and

(3) A list of the names and affiliations of all persons expected to attend the portion or portions of the meeting or the portion or portions of a series of meetings.

(c) Except as otherwise provided in §§503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under §503.74, or §503.75, by which it is determined that the portion or portions of a meeting or the portion or portions of a series of meetings shall remain open to public observation, the Secretary shall make available to the public a written copy of the

recorded vote reflecting the vote of each member of the agency.

§ 503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.

(a) Upon any request that the agency close a portion or portions of any meeting or any portion or portions of any series of meetings under the provisions of §§ 503.74 and 503.75, the General Counsel of the agency shall certify in writing to the agency, prior to an agency vote on that request, whether or not in his or her opinion the closing of any such portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b). If, in the opinion of the General Counsel, the closing of a portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b), his or her certification of that opinion shall cite each applicable, particular, exemptive provision of that Act and provision of this subpart.

(b) A copy of the certification of the General Counsel as described in paragraph (a) of this section, together with a statement of the officer presiding over the portion or portions of any meeting or the portion or portions of a series of meetings setting forth the time and place of the relevant meeting or meetings, and the persons present, shall be maintained by the Secretary for public inspection.

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79, 503.80 and 503.81.

(b) All inquiries as to the status of pending matters which were considered by the Commission in closed session should be directed to the Secretary of the Commission. Commission personnel who attend closed meetings of the Commission are prohibited from disclosing anything that occurs during those meetings. An employee's failure to respect the confidentiality of closed meetings constitutes a violation of Commission's General Standards of Conduct. The Commission can, of course, determine to make public the events or decisions occurring in a closed meeting, such information to be disseminated by the Office of the Secretary. An inquiry to the Office of the Secretary as to whether any information has been made public is not, therefore, improper. However, a request of or attempt to persuade a Commission employee to divulge the contents of a closed meeting constitutes a lack of proper professional conduct inappropriate to a person practicing before this agency, and requires that the employee file a report of such event so that a determination can be made whether disciplinary action should be initiated pursuant to § 502.30 of this chapter.

§ 503.79 Exceptions—information pertaining to meeting.

Except in a case where the agency finds that the public interest requires otherwise, information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings need not be disclosed by the agency if the agency determines, under the provisions of §§ 503.80 and 503.81 that disclosure of that information is likely to disclose matters which are:

(a) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and in fact properly classified pursuant to such Executive order;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information, obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime, or formally censuring any person;

(f) Of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such record or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concerned with the agency's issuance of a subpena, the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§503.80 Procedures for withholding information pertaining to meeting.

(a) Any member of the agency, or the General Counsel of the agency may request that information pertaining to a portion or portions of a meeting or to a portion or portions of a series of meetings be withheld from public disclosure for any of the reasons set forth in §503.79 by submitting such request in writing to the Secretary not later than two (2) weeks prior to the commencement of the first meeting in a series of meetings.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later than eight (8) days prior to the scheduled meeting of the agency.

(c) At the time scheduled by the Secretary in paragraph (b) of this section, the Members of the agency, upon consideration of the request submitted under paragraph (a) of this section, shall vote upon that request. That vote shall determine whether or not information pertaining to a meeting may be withheld from public disclosure for any of the reasons provided in §503.79, and whether or not the public interest requires that the information be disclosed notwithstanding the applicability of the reasons provided in §503.79 permitting the withholding from public disclosure of the information pertaining to a meeting.

(d) In the case of a vote on a request under this section to withhold from public disclosure information pertaining to a portion or portions of a meeting, no such information shall be withheld from public disclosure unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information by recorded vote.

(e) In the case of a vote on a request under this section to withhold information pertaining to a portion or portions

of a series of meetings, no such information shall be withheld unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information. A determination to withhold information pertaining to a portion or portions of a series of meetings from public disclosure may be accomplished by a single vote on the issues described in paragraph (c) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.81 Effect of vote to withhold information pertaining to meeting.

(a) Where the agency votes as provided in § 503.80 to withhold from public disclosure information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, such information shall be excepted from the requirements of §§ 503.78, 503.82 and 503.83.

(b) Where the agency votes as provided in § 503.80 to permit public disclosure of information pertaining to a portion of portions of a meeting or portion or portions of a series of meetings, such information shall be disclosed to the public as required by §§ 503.78, 503.82 and 503.83.

(c) Not later than the day following the date on which a vote is taken under § 503.80, by which the information pertaining to a meeting is determined to be disclosed, the Secretary shall make available to the public a written copy of such vote reflecting the vote of each member of the agency on the question.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.82 Public announcement of agency meeting.

(a) Except as provided in §§ 503.80 and 503.81 regarding a determination to withhold from public disclosure any information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, or as otherwise provided in paragraph (c) of this section, the Secretary of the agency shall make public announcement of each meeting of the agency.

(b) Except as otherwise provided in this section, public announcement of each meeting of the agency shall be accomplished not later than one week prior to commencement of a meeting or the commencement of the first meeting in a series of meetings, and shall disclose:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings shall be open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about a meeting.

(c) The announcement described in paragraphs (a) and (b) of this section may be accomplished less than one week prior to the commencement of any meeting or series of meetings, provided the agency determines by recorded vote that the agency business requires that any such meeting or series of meetings be held at an earlier date. In the event of such a determination by the agency, public announcement as described in paragraph (b) of this section shall be accomplished at the earliest practicable time.

(d) Immediately following any public announcement accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the FEDERAL REGISTER disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings is open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

(e) No comments or further information relating to a particular item scheduled for an agency meeting will

be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 27002, July 17, 1987]

§503.83 Public announcement of changes in meeting.

(a) Except as provided in §§503.80 and 503.81, under the provisions of paragraphs (b) and (c) of this section, the time or place of a meeting or series of meetings may be changed by the agency following accomplishment of the announcement and notice required by §503.82, provided the Secretary of the agency shall publicly announce such change at the earliest practicable time.

(b) The subject matter of a portion or portions of a meeting or a portion or portions of a series of meetings, the time and place of such meeting, and the determination that the portion or portions of a series of meetings shall be open or closed to public observation may be changed following accomplishment of the announcement required by §503.82, provided:

(1) The agency, by recorded vote of the majority of the entire membership of the agency, determines that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Secretary of the agency publicly announces, at the earliest practicable time, the change made and the vote of each member upon such change.

(c) Immediately following any public announcement of any change accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the FEDERAL REGISTER disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of any meeting or any portion or portions of any series of meetings is open or closed to public observation;

(5) Any change in paragraphs (c) (1), (c) (2), (c) (3), or (c) (4) of this section; and

(6) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§503.84 [Reserved]

§503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of this subpart, the following records shall be maintained by the Secretary of the agency:

(1) The certification of the General Counsel of the agency required by §503.77;

(2) A statement from the officer presiding over the portion or portions of the meeting or portion or portions of a series of meetings setting forth the time and place of the portion or portions of the meeting or portion or portions of the series of meetings, the persons present at those times; and

(3) Except as provided in paragraph (b) of this section, a complete transcript or electronic recording fully recording the proceedings at each portion of each meeting closed to public observation.

(b) In case the agency determines to close to public observation any portion or portions of any meeting or portion or portions of any series of meetings because public observation of such portion or portions of any meeting is likely to specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, the agency may maintain a set of minutes in lieu of the transcript or recording described in paragraph (a)(3) of this section. Such minutes shall contain:

(1) A full and clear description of all matters discussed in the closed portion of any meeting;

(2) A full and accurate summary of any action taken on any matter discussed in the closed portion of any meeting and the reasons therefor;

(3) A description of each of the views expressed on any matter upon which action was taken as described in paragraph (b)(2) of this section;

(4) The record of any rollcall vote which shall show the vote of each member on the question; and

(5) An identification of all documents considered in connection with any action taken on a matter described in paragraph (b)(1) of this section.

(c) All records maintained by the agency as described in this section shall be held by the agency for a period of not less than two (2) years following any meeting or not less than one (1) year following the conclusion of any agency proceeding with respect to which that meeting or portion of a meeting was held.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.86 Public access to records.

(a) All transcripts, electronic recordings or minutes required to be maintained by the agency under the provisions of §§ 503.85(a)(3) and 503.85(b) shall be promptly made available to the public by the Secretary of the agency, except for any item of discussion or testimony of any witnesses which the agency determines to contain information which may be withheld from public disclosure because its disclosure is likely to disclose matters which are:

(1)(i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involved with accusing any person of a crime, or formally censuring any person;

(6) Of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concerned with the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an

arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in §§503.31 through 503.36.

(c) Records disclosed to the public under this section shall be furnished at the expense of the party requesting such access at the actual cost of duplication or transcription.

§503.87 Effect of provisions of this subpart on other subparts.

(a) Nothing in this subpart shall limit or expand the ability of any person to seek access to agency records under subpart D (§§503.31 to 503.36) of this part except that the exceptions of §503.86 shall govern requests to copy or inspect any portion of any transcript, electronic recordings or minutes required to be kept under this subpart.

(b) Nothing in this subpart shall permit the withholding from any individual to whom a record pertains any record required by this subpart to be maintained by the agency which record is otherwise available to such an individual under the provisions of subpart G of this part.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

Sec.

504.1 Purpose and scope.
504.2 Definitions.
504.3 General information.
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504.9 Information required by the Commission.
504.10 Time constraints on final administrative actions.
504.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 552, 553; secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362).

SOURCE: 49 FR 44415, Nov. 6, 1984, unless otherwise noted.

§504.1 Purpose and scope.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA) and Executive Order 12114 and incorporates and complies with the Regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500 *et seq.*).

(b) This part applies to all actions of the Federal Maritime Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 21 of the Shipping Act, 1916 or section 15 of the Shipping Act of 1984. Penalty for non-compliance with a section 21 order is $100 a day for each day of default; penalty for falsification of such a report is a fine of up to $1,000 or imprisonment up to one year, or both. Penalty for violation of a Commission order under section 15 of the Shipping Act of 1984 may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. (Each day of a continuing violation constitutes a separate offense).

§504.2 Definitions.

(a) *Shipping Act, 1916* [46 U.S.C. app. 801–846] means the Shipping Act, 1916 as amended, 46 U.S.C. app. 801 *et seq.*

(b) *Common carrier* means any common carrier by water as defined in section 3 of the Shipping Act of 1984 or in the Shipping Act, 1916, including a conference of such carriers.

(c) *Environmental impact* means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) *Potential action* means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) *Proposed action* means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) *Environmental assessment* means a concise document that serves to ''provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact'' (40 CFR 1508.9).

(g) *Recyclable* means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

(h) *Shipping Act of 1984* means the Shipping Act of 1984 (46 U.S.C. App. 1701–1720).

(i) *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.

§ 504.3 General information.

(a) All comments submitted pursuant to this part shall be addressed to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

(b) A list of Commission actions for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (telephone (202) 523–5835).

§ 504.4 Categorical exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment because they are purely ministerial actions or because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. The following Commission actions, and rulemakings related thereto, are therefore excluded:

(1) Issuance, modification, denial and revocation of Ocean Freight Forwarder licenses.

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR part 540.

(3) Receipt of surety bonds submitted by non-vessel-operating common carriers.

(4) Promulgation of procedural rules pursuant to 46 CFR part 502.

(5) Acceptance or rejection of tariff filings in foreign and domestic commerce.

(6) Consideration of special permission applications filed pursuant to 46 CFR part 514.

(7) Receipt of terminal tariffs pursuant to 46 CFR part 514.

(8) Suspension of and/or decision to investigate tariff schedules pursuant to section 3 of the Intercoastal Shipping Act, 1933.

(9) Consideration of amendments to agreements filed pursuant to section 15 of the Shipping Act, 1916 or section 5 of the Shipping Act of 1984, which do not increase the authority set forth in the effective agreement.

(10) Consideration of agreements between common carriers which solely affect intraconference or inter-rate agreement relationships or pertain to administrative matters of conferences or rate agreements.

(11) Consideration of agreements between common carriers to discuss, propose or plan future action, the implementation of which requires filing a further agreement.

(12) Consideration of exclusive or non-exclusive equipment interchange or husbanding agreements.

(13) Receipt of non-exclusive transshipment agreements.

(14) Action relating to collective bargaining agreements.

(15) Action pursuant to section 9 of the Shipping Act of 1984 concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations.

(16) Receipt of self-policing reports or shipper requests and complaints.

(17) Consideration of financial reports prepared by common carriers in the domestic offshore trades.

(18) Consideration of actions solely affecting the environment of a foreign country.

(19) Action taken on special docket applications pursuant to 46 CFR 502.92.

(20) Consideration of matters related solely to the issue of Commission jurisdiction.

(21) Investigations conducted pursuant to 46 CFR part 555.

(22) Investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act, 1916 or the Shipping Act of 1984.

(23) [Reserved]

(24) Action regarding access to public information pursuant to 46 CFR part 503.

(25) Action regarding receipt and retention of minutes of conference meetings.

(26) Administrative procurements (general supplies).

(27) Contracts for personal services.

(28) Personnel actions.

(29) Requests for appropriations.

(30) Consideration of all agreements involving marine terminal facilities and/or services except those requiring substantial levels of construction, dredging, land-fill, energy usage and other activities which may have a significant environmental effect.

(31) Consideration of agreements regulating employee wages, hours of work, working conditions or labor exchanges.

(32) Consideration of general agency agreements involving ministerial duties of a common carrier such as internal management, cargo solicitation, booking of cargo, or preparation of documents.

(33) Consideration of agreements pertaining to credit rules.

(34) Consideration of agreements involving performance bonds to a conference from a conference member guaranteeing compliance by the member with the rules and regulations of the conference.

(35) Consideration of agreements between members of two or more conferences or other rate-fixing agreements to discuss and agree upon common self-policing systems and cargo inspection services.

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Commission's Office of Environmental Analysis (OEA), explain in detail their reasons. The OEA shall review these submissions and determine, not later than ten (10) days after receipt, whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within ten (10) days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to §504.5.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984; 56 FR 50662, Oct. 8, 1991; 60 FR 27229, May 23, 1995]

§504.5 Environmental assessments.

(a) Every Commission action not specifically excluded under §504.4 shall be subject to an environmental assessment.

(b) The OEA may publish in the FEDERAL REGISTER a notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the

significant environmental issues. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the FEDERAL REGISTER.

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, the OEA determines that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the FEDERAL REGISTER. This document shall include the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4 will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the FEDERAL REGISTER. The Commission shall review the petitions and either deny them or order the OEA to prepare an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared by the OEA when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the FEDERAL REGISTER.

(3) The major decision points in the EIS process are:

(i) The issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ); and

(ii) The issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft environmental impact statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR part 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. There will be no fee charged to such parties. One copy per person will also be provided to interested persons at their request. The fee charged such persons shall be that provided in § 503.43 of this chapter.

(3) Comments on the DEIS must be received by the Commission within ten (10) days of the date the Environmental Protection Agency (EPA) publishes in the FEDERAL REGISTER notice that the DEIS was filed with it. Sixteen copies shall be submitted as provided in § 504.3(a). Comments shall be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to ten (10) days if good cause is shown.

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, the OEA will prepare a final environmental impact statement (FEIS) pursuant to 40 CFR part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will

be distributed in the same manner as specified in paragraph (b)(2) of this section.

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) For any Commission action which has been assigned to an ALJ for evidentiary hearing:

(i) The FEIS shall be submitted prior to the close of the record, and

(ii) The ALJ shall consider the environmental impacts and alternatives contained in the FEIS in preparing the initial decision.

(4)(i) For all proposed Commission actions, any party may, by petition to the Commission within ten (10) days following EPA's notice in the FEDERAL REGISTER, assert that the FEIS contains a substantial and material error of fact which can only be properly resolved by conducting an evidentiary hearing, and expressly request that such a hearing be held. Other parties may submit replies to the petition within ten (10) days of its receipt.

(ii) The Commission may delineate the issue(s) and refer them to an ALJ for expedited resolution or may elect to refer the petition to an ALJ for consideration.

(iii) The ALJ shall make findings of fact on the issue(s) and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(iv) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§504.8 Record of decision.

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

§504.9 Information required by the Commission.

(a) Upon request of OEA, a person filing a complaint, protest, petition or agreement requesting Commission action shall submit to OEA, no later than ten (10) days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment, if such requested action will:

(1) Alter cargo routing patterns between ports or change modes of transportation;

(2) Change rates or services for recyclables;

(3) Change the type, capacity or number of vessels employed in a specific trade; or

(4) Alter terminal or port facilities.

(b) The statement submitted shall, to the fullest extent possible, include:

(1) The probable impact of the requested Commission action on the environment (*e.g.*, the use of energy or natural resources, the effect on air, noise, or water pollution), compared to the environmental impact created by existing uses in the area affected by it;

(2) Any adverse environmental effects which cannot be avoided if the Commission were to take or adopt the requested action; and

(3) Any alternatives to the requested Commission action.

(c) If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the OEA for informal assistance in preparing this statement. The OEA shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(d) In all cases, the OEA may request every common carrier by water, or marine terminal operator, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within ten (10) days of such request, all material information necessary to comply with NEPA and this part. Information not

produced in response to an informal request may be obtained by the Commission pursuant to section 21 of the Shipping Act, 1916, or section 15 of the Shipping Act of 1984.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 504.10 Time constraints on final administrative actions.

No decision on a proposed action shall be made or recorded by the Commission until the later of the following dates unless reduced pursuant to 40 CFR 1506.10(d), or unless required by a statutorily-prescribed deadline on the Commission action:

(a) Forty (40) days after EPA's publication of the notice described in § 504.7(b) for a DEIS; or

(b) Ten (10) days after publication of EPA's notice for an FEIS.

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

This section displays the control numbers 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 1980, Public Law 96–511. The Commission intends that this section comply with the requirements of section 3507(f) 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:

Section	Current OMB Control No.
504.4 through 504.7	3072–0035
504.9	3072–0035.

PART 505—ADMINISTRATIVE OFFSET

505.1 Scope of regulations.
505.2 Definitions.
505.3 General.
505.4 Notification procedures.
505.5 Agency review.
505.6 Written agreement for repayment.
505.7 Administrative offset.
505.8 Jeopardy procedure.

AUTHORITY: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

SOURCE: 61 FR 50444, Sept. 26, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 50444, Sept. 26, 1996, part 505 was added, effective Oct. 28, 1996.

§ 505.1 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with the Commission, or where a request for an offset is received by the Commission from another agency. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

§ 505.2 Definitions.

(a) *Administrative offset,* as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 505.3 General.

(a) The Chairman or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as assembled (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interests of the United States to collect the debt by administrative offset because of the decreased costs of collection and the acceleration in the payment of the debt.

(b) The Chairman, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the

person has been afforded the necessary due process rights.

(c) The Chairman, or his or her designee, may request another agency that holds funds payable to a Commission debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed by other agencies of the United States or by any State or local government.

§505.4 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to the Commission. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of the Commission to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Commission with respect to the debt;

(c) An opportunity for review within the Commission of the determination of the Commission with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§505.5 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in §505.4.

(b) If the debtor requests an opportunity to inspect or copy the Commission's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Commission may be temporarily suspended. Depending on the type of transaction the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1996, as amended, will continue to accrue.

§505.6 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Commission's request for the statement. At the Commission's option, a confess-judgment note or bond of indemnity with surety may be required

for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103.

§ 505.7 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 505.5 or if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) Requests for offset to other Federal agencies. The Chairman or his or her designee may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Commission by that debtor. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the agency has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) Requests for offset from other Federal agencies. Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 505.8 Jeopardy procedure.

The Commission may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§ 505.4 and 505.5 of this part if failure to take the offset would substantially jeopardize the Commission's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Commission shall be promptly refunded.

PART 507—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL MARITIME COMMISSION

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895, 22896, June 23, 1986, unless otherwise noted.

§507.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§507.102 Application.

This part applies to all programs or activities conducted by the agency.

§507.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 507.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 507.104—507.109 [Reserved]

§ 507.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 507.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 507.112—507.129 [Reserved]

§ 507.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 507.131—507.139 [Reserved]

§ 507.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 507.141—507.148 [Reserved]

§ 507.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 507.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 507.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 507.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 507.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 507.150 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by

October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 507.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 507.152—507.159 [Reserved]

§ 507.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 507.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If

an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 507.161—507.169 [Reserved]

§ 507.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 507.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895, June 23, 1986, as amended at 51 FR 22896, June 23, 1986]

§§ 507.171—507.999 [Reserved]

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS, OCEAN FREIGHT FORWARDERS, MARINE TERMINAL OPERATIONS, PASSENGER VESSELS, TARIFFS AND SERVICE CONTRACTS

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

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AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a.

SOURCE: 49 FR 36297, Sept. 14, 1984, unless otherwise noted.

Subpart A—General

§510.1 Scope.

(a) This part sets forth regulations providing for the licensing as ocean freight forwarders of persons, including individuals, corporations and partnerships, who wish to carry on the business of freight forwarding. This part also prescribes the bonding requirements and the duties and responsibilities of ocean freight forwarders, regulations concerning practices of freight forwarders and common carriers, and the grounds and procedures for revocation and suspension of licenses.

(b) Information obtained under this part is used to determine the qualifications of freight forwarders and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of a freight forwarder license. Persons operating without the proper license may be subject to civil penalties not to exceed $5,000 for each such violation unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation; for other violations of the provisions of this part, the civil penalties range from $5,000 to $25,000 for each violation (46 U.S.C. app. 1712). Each day of a continuing violation shall constitute a separate violation.

§510.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701–1720).

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term *beneficial interest* shall not include any obligation in favor of a freight forwarder arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office established by or maintained by or under the control of a licensee for the purpose of rendering freight forwarding services, which office is located at an address different from that of the licensee's designated home office. This

term does not include a separately incorporated entity.

(d) *Brokerage* refers to payment by a common carrier to an ocean freight broker for the performance of services as specified in paragraph (m) of this section.

(e) *Common carrier* means any 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.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in § 510.23(c) of this part.

(g) *Freight forwarding fee* means charges billed by a freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing export declarations;

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) *From the United States* means oceanborne export commerce from the United States, its Territories, or possessions to foreign countries.

(j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean freight forwarder.

(k) *Non-vessel-operating common carrier* means 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.

(l) *Ocean common carrier* means a vessel-operating common carrier but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(m) *Ocean freight broker* is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

(n) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Principal*, except as used in Surety Bond Form FMC 59, Rev., refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensee to facilitate the ocean transportation of such property.

(p) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensee's usual charges for such services.

(q) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(r) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(s) *Small shipment* refers to a single shipment sent by one consignor to one consignee on one bill of lading which does not exceed the underlying common carrier's minimum charge rule.

(t) *Special contract* is a contract for freight forwarding services which provides for a periodic lump sum fee.

(u) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

§510.3 License; when required.

Except as otherwise provided in this part, a person must hold a valid ocean freight forwarder license in order to perform freight forwarding services, and, except as provided in §510.4, no person shall perform, or hold out to perform, such services unless such person holds a valid license issued by the Commission to engage in such business. A separate license is required for each branch office that is separately incorporated.

§510.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shipper.* Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Employee or branch office of licensed forwarder.* An individual employee or unincorporated branch office of a licensed ocean freight forwarder is not required to be licensed in order to act solely for such licensee, but each licensed ocean freight forwarder will be held strictly responsible hereunder for the acts or omissions of any of its employees rendered in connection with the conduct of the business.

(c) *Common carrier.* A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs on file with the Commission.

(d) *Ocean freight brokers.* An ocean freight broker is not required to be licensed to perform those services specified in §510.2(m).

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

§510.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean freight forwarder's license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean freight forwarding duties in the United States, and the necessary character to render forwarding services; and

(2) It has obtained and filed with the Commission a valid surety bond in conformance with §510.14.

(b) *Qualifying individual.* The following individuals must qualify the applicant for a license:

(1) *Sole proprietorship*—The applicant sole proprietor.

(2) *Partnership*—At least one of the active managing partners, but all partners must execute the application.

(3) *Corporation*—At least one of the active corporate officers.

(c) *Affiliates of forwarders.* An independently qualified applicant may be granted a separate license to carry on the business of forwarding even though it is associated with, under common control with, or otherwise related to another ocean freight forwarder through stock ownership or common

directors or officers, if such applicant submits: (1) A separate application and fee, and (2) a valid surety bond in the form and amount prescribed under § 510.14. The proprietor, partner or officer who is the qualifying individual of one active licensee shall not also be designated the qualifying proprietor, partner or officer of an applicant for another ocean freight forwarder license.

(d) *Common carrier.* A common carrier or agent thereof which meets the requirements of this part may be licensed to dispatch shipments moving on other than such carrier's own bill of lading subject to the provisions of § 510.23(g).

[49 FR 36297, Sept. 14, 1984; 49 FR 38544, Oct. 1, 1984]

§ 510.12 Application for license.

(a) *Application and forms.* (1) Any person who wishes to obtain a license to carry on the business of forwarding shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, a completed application Form FMC–18 Rev. (*Application for a License as an Ocean Freight Forwarder*) and a completed anti-rebate certification in the format prescribed under § 510.25. Copies of Form FMC–18 Rev. may be obtained from the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's offices at other locations. Notice of filing of such application shall be published in the FEDERAL REGISTER and shall state the name and address of the applicant. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(2) An individual who is applying for a license in his or her own name must complete the following certification.

I. _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of $687 made payable to the *Federal Maritime Commission.*

(c) *Rejection.* Any application which appears upon its face to be incomplete or to indicate that the applicant fails to meet the licensing requirements of the Shipping Act of 1984, or the Commission's regulations, shall be returned by certified U.S. mail to the applicant without further processing, together with an explanation of the reason(s) for rejection, and the application fee shall be refunded in full. All other applications will be assigned an application number, and each applicant will be notified of the number assigned to its application. Persons who have had their applications returned may reapply for a license at any time thereafter by submitting a new application, together with the full application fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with § 510.13.

(e) *Changes in fact.* Each applicant and each licensee shall submit to the Commission, in duplicate, an amended Form FMC–18 Rev. advising of any changes in the facts submitted in the original application, within thirty (30) days after such change(s) occur. In the case of an application for a license, any unreported change may delay the processing and investigation of the application and may result in rejection or denial of the application. No fee is required when reporting changes to an application for initial license under this section.

[49 FR 36297, Sept. 14, 1984, as amended at 55 FR 42194, Oct. 18, 1990; 59 FR 59171, Nov. 16, 1994]

§ 510.13 Investigation of applicants.

The Commission shall conduct an investigation of the applicant's qualifications for a license. Such investigations may address:

(a) The accuracy of the information submitted in the application;

(b) The integrity and financial responsibility of the applicant;

(c) The character of the applicant and its qualifying individual; and

(d) The length and nature of the qualifying individual's experience in handling freight forwarding duties.

§ 510.14 Surety bond requirements.

(a) *Form and amount.* No license shall be issued to an applicant who does not have a valid surety bond (FMC–59 Rev.) on file with the Commission in the amount of $30,000. The amount of such bond shall be increased by $10,000 for each of the applicant's unincorporated branch offices. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury. Surety Bond Form FMC–59 Rev. can be obtained in the same manner as Form FMC–18 Rev. under § 510.12(a).

(b) *Filing of bond.* Upon notification by the Commission by certified U.S. mail that the applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Tariffs, a surety bond in the form and amount prescribed in § 510.14(a). No license will be issued until the Commission is in receipt of a valid surety bond from the applicant. If more than six (6) months elapse between issuance of the notification of qualification and receipt of the surety bond, the Commission shall, at its discretion, undertake a supplementary investigation to determine the applicant's continued qualification. The fee for such supplementary investigation shall be $213 payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* Should the applicant not file the requisite surety bond within two years of notification, the Commission will consider the application to be invalid.

(c) *Branch offices.* A new surety bond, or rider to the existing bond, increasing the amount of the bond in accordance with § 510.14(a), shall be filed with the Commission prior to the date the licensee commences operation of any branch office. Failure to adhere to this requirement may result in revocation of the license.

(d) *Termination of bond.* No license shall remain in effect unless a valid surety bond is maintained on file with the Commission. Upon receipt of notice of termination of a surety bond, the Commission shall notify the concerned licensee by certified U.S. mail, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license as of the termination date of the bond, unless the licensee shall have submitted a valid replacement surety bond before such termination date. Replacement surety bonds must bear an effective date no later than the termination date of the expiring bond.

[49 FR 36297, Sept. 14, 1984, as amended at 59 FR 59171, Nov. 16, 1994]

§ 510.15 Denial of license.

If the Commission determines, as a result of its investigation, that the applicant:

(a) Does not possess the necessary experience or character to render forwarding services;

(b) Has failed to respond to any lawful inquiry of the Commission; or

(c) Has made any willfully false or misleading statement to the Commission in connection with its application,

A letter of intent to deny the application shall be sent to the applicant by certified U.S. mail, stating the reason(s) why the Commission intends to deny the application. If the applicant submits a written request for hearing on the proposed denial within twenty (20) days after receipt of notification, such hearing shall be granted by the Commission pursuant to its Rules of Practice and Procedure contained in part 502 of this chapter. Otherwise, denial of the application will become effective and the applicant shall be so notified by certified U.S. mail. Civil penalties for violations of the Act or any Commission order, rule or regulation may be assessed in accordance with subpart W of part 502 of this chapter in any proceeding on the proposed denial of a license or may be compromised for any such violation when a proceeding has not been instituted.

[49 FR 36297, Sept. 14, 1984, as amended at 58 FR 27213, May 7, 1993]

§ 510.16 Revocation or suspension of license.

(a) *Grounds for revocation.* Except for the automatic revocation for termination of a surety bond under § 510.14(d), or as provided in § 510.14(c), a license may be revoked or suspended after notice and hearing for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of forwarding;

(2) Failure to respond to any lawful order or inquiry by the Commission;

(3) Making a willfully false or misleading statement to the Commission in connection with an application for a license or its continuance in effect;

(4) Where the Commission determines that the licensee is not qualified to render freight forwarding services;

(5) Failure to honor the licensee's financial obligations to the Commission, such as for civil penalties assessed or agreed to in a settlement agreement under subpart W of part 502 of this chapter; or

(6) Failure to file an anti-rebate certification as required by § 510.25 and part 582 of this chapter. Any licensed freight forwarder who fails to file an anti-rebate certification will be notified by FEDERAL REGISTER publication and by certified mail that if within forty-five (45) days from the date the certified notice is mailed the licensee does not either establish that the required anti-rebate certification was filed in accordance with § 510.25 and part 582 of this chapter or file the required anti-rebate certification, its license will be suspended until such time as it is reinstated by the Commission after an anti-rebate certification is filed. The license of any freight forwarder who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days notice period will not be suspended; however, the licensee will be subject to civil penalties as provided in part 582 of this chapter. After the forty-five (45) days, any licensee that still does not have an anti-rebate certification on file with the Commission will be notified by FEDERAL REGISTER publication and certified mail, return receipt requested, that its license has been suspended.

(b) *Civil penalties.* As provided for in subpart W of part 502 of this chapter, civil penalties for violations of the Act or any Commission order, rule, or regulation may be assessed in any proceeding to revoke or suspend a license and may be compromised when such a proceeding has not been instituted.

(c) *Notice of revocation.* The Commission shall publish in the FEDERAL REGISTER a notice of each revocation.

[49 FR 36297, Sept. 14, 1984, as amended at 55 FR 35318, Aug. 29, 1990; 57 FR 39623, Sept. 1, 1992; 58 FR 27213, May 7, 1993]

§ 510.17 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render forwarding services, any further application within 3 years of the date of the most recent conduct on which the Commission's notice of revocation or denial was based, made by such former licensee or applicant or by another applicant employing the same qualifying individual or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission.

§ 510.18 Issuance and use of license.

(a) *Qualification necessary for issuance.* The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render forwarding services and has filed the required surety bond.

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant be a sole proprietorship, a partnership, or a corporation, and the license will be issued to only one legal entity. A license issued to a sole proprietor doing business under a trade name shall be in the name of the sole proprietor, indicating the trade name under which the licensee will be conducting business. Only one license shall be issued to any applicant regardless of the number of names under which such applicant may be doing business.

(c) *Use limited to named licensee.* Except as otherwise provided in this part, such license is limited exclusively to use by the named licensee and shall not be transferred without approval to another person.

§510.19 Changes in organization.

(a) The following changes in an existing licensee's organization require prior approval of the Commission:

(1) Transfer of a corporate license to another person;

(2) Change in ownership of an individual proprietorship;

(3) Addition of one or more partners to a licensed partnership;

(4) Change in the business structure of a licensee from or to a sole proprietorship, partnership, or corporation, whether or not such change involves a change in ownership;

(5) Any change in a licensee's name; or

(6) Change in the identity or status of the designated qualifying individual, except as discussed in paragraphs (b) and (c) of this section.

(b) *Operation after death of sole proprietor.* In the event the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the deceased sole proprietor had undertaken to act as an ocean freight forwarder pursuant to the existing license, if the death is reported within thirty (30) days to the Commission and to all principals for whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until a new license has been issued. Applications for a new license by the said executor, administrator, heir(s), or assign(s) shall be made on Form FMC–18 Rev., and shall be accompanied by the transfer fee set forth in paragraph (e) of this section.

(c) *Operation after retirement, resignation, or death of qualifying individual.* When a partnership or corporation has been licensed on the basis of the qualifications of one or more of the partners or officers thereof, and such qualifying individual(s) shall no longer serve in a full-time, active capacity with the firm, the licensee shall report such change to the Commission within thirty (30) days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed ocean freight forwarding experience of other active managing partner(s) or officer(s) who may qualify the licensee. Such qualifying individual(s) must meet the applicable requirements set forth in §510.11(a) of this part. The licensee may continue to operate as an ocean freight forwarder while the Commission investigates the qualifications of the newly designated partner or officer.

(d) *Incorporation of branch office.* In the event a licensee's validly operating branch office undergoes incorporation as a separate entity, the licensee may continue to operate such office pending receipt of a separate license, provided that:

(1) The separately incorporated entity applies to the Commission for its own license within ten (10) days after incorporation, and

(2) The continued operation of the office is carried on as a *bona fide* branch office of the licensee, under its full control and responsibility, and not as an operation of the separately incorporated entity.

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on form FMC–18 Rev., together with a processing fee of $365, made payable by money order, certified check or cashier's check to the *Federal Maritime Commission. Should a personal check not be honored when presented for payment, the processing of the application shall be suspended until the processing fee is paid.*

(f) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such change within thirty days after such change occurs by submitting in duplicate, an amended Form FMC–18, Rev. No application fee is required when reporting this change.

[49 FR 36297, Sept. 14, 1984, as amended at 57 FR 40129, Sept. 2, 1992; 59 FR 59171, Nov. 16, 1994]

Subpart C—Duties and Responsibilities of Freight Forwarders; Forwarding Charges; Reports to Commission

§ 510.21 General duties.

(a) *License; name and number.* Each licensee shall carry on the business of forwarding only under the name in which its license is issued and only under its license number as assigned by the Commission. Wherever the licensee's name appears on shipping documents, its FMC license number shall also be included.

(b) *Stationery and billing forms; notice of shipper affiliation.* (1) The name and license number of each licensee shall be permanently imprinted on the licensee's office stationery and billing forms. The Commission may temporarily waive this requirement for good cause shown if the licensee rubber stamps or types its name and FMC license number on all papers and invoices concerned with any forwarding transaction.

(2) When a licensee is a shipper or seller of goods in international commerce or affiliated with such an entity, the licensee shall have the option of: (i) Identifying itself as such and/or, where applicable, listing its affiliates on its office stationery and billing forms, or (ii) including the following notice on such items:

This company is a shipper or seller of goods in international commerce or is affiliated with such an entity. Upon request, a general statement of its business activities and those of its affiliates, along with a written list of the names of such affiliates, will be provided.

(c) *Use of license by others; prohibition.* No licensee shall permit its license or name to be used by any person who is not a *bona fide* individual employee of the licensee. Unincorporated branch offices of the licensee may use the license number and name of the licensee if such branch offices: (1) Have been reported to the Commission in writing; and (2) are covered by an increased bond in accordance with § 510.14(c).

(d) *Arrangements with forwarders whose licenses have been revoked.* Unless prior written approval from the Commission has been obtained, no licensee shall, directly or indirectly:

(1) Agree to perform forwarding services on export shipments as an associate, correspondent, officer, employee, agent, or sub-agent of any person whose license has been revoked or suspended pursuant to § 510.16;

(2) Assist in the furtherance of any forwarding business of such person;

(3) Share forwarding fees or freight compensation with any such person; or

(4) Permit any such person, directly or indirectly, to participate, through ownership or otherwise, in the control or direction of the freight forwarding business of the licensee.

(e) *Arrangements with unauthorized persons.* No licensee shall enter into an agreement or other arrangement (excluding sales agency arrangements not prohibited by law or this part) with an unlicensed person so that any resulting fee, compensation, or other benefit inures to the benefit of the unlicensed person. When a licensee is employed for the transaction of forwarding business by a person who is not the person responsible for paying the forwarding charges, the licensee shall also transmit to the person paying the forwarding charges a copy of its invoice for services rendered.

(f) *False or fraudulent claims, false information.* No licensee shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning a forwarding transaction which it has reason to believe is false or fraudulent, nor shall any such licensee knowingly impart to a principal, common carrier or other person, false information relative to any forwarding transaction.

(g) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, a licensee shall make available promptly for inspection or reproduction all records and books of account in connection with its forwarding business, and shall respond promptly to any lawful inquiries by such representative.

(h) *Policy against rebates.* The following declaration shall appear on all invoices submitted to principals:

(Name of firm) has a policy against payment, solicitation, or receipt of any rebate, directly or indirectly, which would be unlawful under the United States Shipping Act of 1984.

§510.22 Forwarder and principal; fees.

(a) *Compensation or fee sharing.* No licensee shall share, directly or indirectly, any compensation or freight forwarding fee with a shipper, consignee, seller, or purchaser, or an agent, affiliate, or employee thereof; nor with any person advancing the purchase price of the property or guaranteeing payment therefor; nor with any person having a beneficial interest in the shipment.

(b) *Withholding information.* No licensee shall withhold any information concerning a forwarding transaction from its principal.

(c) *Due diligence.* Each licensee shall exercise due diligence to ascertain the accuracy of any information it imparts to a principal concerning any forwarding transaction.

(d) *Errors and omissions.* Each licensee shall comply with the laws of the United States and any involved State, Territory, or possession thereof, and shall assure that to the best of its knowledge there exists no error, misrepresentation in, or omission from any export declaration, bill of lading, affidavit, or other document which the licensee executes in connection with a shipment. A licensee who has reason to believe that its principal has not, with respect to a shipment to be handled by such licensee, complied with the laws of the United States or any State, Commonwealth or Territory thereof, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other paper which the principal executes in connection with such shipment, shall advise its principal promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(e) *Express written authority.* No licensee shall endorse or negotiate any draft, check, or warrant drawn to the order of its principal without the express written authority of such principal.

(f) *Receipt for cargo.* Each receipt issued for cargo by a licensee shall be clearly identified as *Receipt for Cargo* and be readily distinguishable from a bill of lading.

(g) *Invoices; documents available upon request.* A licensee may charge its principal for services rendered. Upon request of its principal, each licensee shall provide a complete breakout of the components of its charges and a true copy of any underlying document or bill of charges pertaining to the licensee's invoice. The following notice shall appear on each invoice to a principal:

Upon request, we shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges.

(h) *Special contracts.* To the extent that special arrangements or contracts are entered into by a licensee, the licensee shall not deny equal terms to other shippers similarly situated.

(i) *Reduced forwarding fees.* No licensee shall render, or offer to render, any freight forwarding service free of charge or at a reduced fee in consideration of receiving compensation from a common carrier or for any other reason. *Exception*: A licensee may perform freight forwarding services for recognized relief agencies or charitable organizations, which are designated as such in the tariff of the common carrier, free of charge or at reduced fees.

(j) *Accounting to principal.* Each licensee shall account to its principal(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of c.o.d. shipments, drafts, letters of credit, and any other sums due such principal(s).

§510.23 Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name many appear with the name of the shipper, but the licensee must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensee only pursuant to such common carrier's tariff provisions. Where a common carrier's tariff provides for the payment of compensation, such compensation shall be paid

on any shipment forwarded on behalf of others where the licensee has provided a written certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certification for a period of five (5) years.

(c) *Form of certification.* Where a licensee is entitled to compensation, the licensee shall provide the common carrier with a signed certification which indicates that the licensee has performed the required services that entitle it to compensation. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. ———, issued by the Federal Maritime Commission and has performed the following services:

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

The required certification may be placed on one copy of the relevant bill of lading, a summary statement from the licensee, the licensee's compensation invoice, or as an endorsement on the carrier's compensation check. Each licensee shall retain evidence in its shipment files that the licensee, in fact, has performed the required services enumerated on the certification.

(d) *Compensation pursuant to tariff provisions.* No licensee, or employee thereof, shall accept compensation from a common carrier which is different than that specifically provided for in the carrier's effective tariff(s) lawfully on file with the Commission. No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount.

(e) *Compensation; services performed by underlying carrier; exemptions.* No licensee shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such licensee, performed any of the forwarding services set forth in § 510.2(h) unless such carrier or agent is also a licensee, or unless no other licensee is willing and able to perform such services.

(f) *Duplicative compensation.* A common carrier shall not pay compensation for the services described in § 510.23(c) more than once on the same shipment.

(g) *Licensed non-vessel-operating common carriers; compensation.* (1) A non-vessel-operating common carrier or person related thereto licensed under this part may collect compensation when, and only when, the following certification is made together with the certification required under paragraph (c) of this section:

The undersigned certifies that neither it nor any related person has issued a bill of lading or otherwise undertaken common carrier responsibility as a non-vessel-operating common carrier for the ocean transportation of the shipment covered by this bill of lading.

(2) Whenever a person acts in the capacity of a non-vessel-operating common carrier as to any shipment, such person shall not collect compensation, nor shall any underlying ocean common carrier pay compensation to such person for such shipment.

(h) A freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

[49 FR 36297, Sept. 14, 1984; 49 FR 38544, Oct. 1, 1984; 57 FR 40131, Sept. 2, 1992]

§ 510.24 Records required to be kept.

Each licensee shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its business of forwarding. These records must be kept in the United

States in such manner as to enable authorized Commission personnel to readily determine the licensee's cash position, accounts receivable and accounts payable. The licensee must maintain the following records for a period of five years:

(a) *General financial data.* A current running account of all receipts and disbursements, accounts receivable and payable, and daily cash balances, supported by appropriate books of account, bank deposit slips, cancelled checks, and monthly reconciliation of bank statements.

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

(c) *Receipts and disbursements by shipment.* A record of all sums received and/or disbursed by the licensee for services rendered and out-of-pocket expenses advanced in connection with each shipment, including specific dates and amounts.

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract with a principal, or modification or cancellation thereof, to which it may be a party. Authorized Commission personnel and *bona fide* shippers shall have access to such records upon reasonable request.

§510.25 Anti-rebate certifications.

(a) Every licensed ocean freight forwarder shall file an anti-rebating certificate on or before December 31, 1992, and thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every applicant for an ocean freight forwarder license shall file an anti-rebating certificate with its license application. Any application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with §510.12 and part 582 of this chapter shall be rejected. Certificates filed with license applications shall be valid from the granting of an ocean freight forwarder license through the first succeeding December 31 of an even-numbered calendar year.

(c) The anti-rebating certificate shall comply with the requirements of part 582 of this chapter.

[57 FR 39623, Sept. 1, 1992]

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

This section displays the control numbers 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 1980, Pub. L. 96–511. The Commission intends that this part comply with the requirements of section 3507(f) 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:

Section	Current OMB Control No.
510.12 (Form FMC–18)	3072–0018
510.14	3072–0018
510.15	3072–0018
510.19 (Form FMC–18)	3072–0018
510.21 through 510.25	3072–0018

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

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514.1 Scope, purpose, requirements, penalties and fees.
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514.7 Service contracts in foreign commerce.

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514.20 Retrieval.
514.21 User charges.
514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
EXHIBIT 1 TO PART 514—ATFI USER REGISTRATION FORM

AUTHORITY: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

SOURCE: 57 FR 36271, Aug. 12, 1992, unless otherwise noted.

Subpart A—General Provisions

§ 514.1 Scope, purpose, requirements, penalties and fees.

(a) *Scope.* The regulations of this part govern:

(1) The publication and filing of tariffs, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984 (46 U.S.C. app. 1702, et seq.).

(2) The publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended (46 U.S.C. app. 801, et seq.), including through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act.

(3) The filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

(4) The filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States. See § 514.3(a)(7).

(5) The formatting of tariff materials for electronic filing, processing and retrieval.

(b) *Purpose.* The tariff format and content requirements of this part reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984. The purposes of this part are also to enable the Commission to:

(1) Discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices.

(2) Determine, through the use of information obtained under this part, the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers in the domestic offshore commerce of the United States under the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, et seq.).

(3) Facilitate, by electronic means, the filing, processing and retrieval of tariff materials to better promote the waterborne commerce of the United States.

(c) *Basic requirements.* Unless exempted or excluded under § 514.3, and as augmented by § 514.8(k)(1), the following are the basic requirements under this part:

(1) *Foreign commerce of the United States.* (i) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, Tariff Rules and practices for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement

and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984.

(ii) Service contracts and their essential terms are also required to be filed by the 1984 Act and shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

(iii) *Anti-rebate certification.* (A) An anti-rebating certification shall be filed in paper format, as prescribed by part 582 of this chapter, by every common carrier in foreign commerce as a prerequisite to obtaining password authority to file its initial tariff under this part, and thereafter, on each succeeding December 31 of an even-numbered calendar year. Except for the initial certification, the certification filed on each succeeding December 31 of an even-numbered calendar year shall be valid for the two calendar years following the December 31 filing date.

(B) Failure of a common carrier to file an anti-rebate certification before filing initial tariffs, as required by this part and part 582 of this chapter, shall result in withholding or suspension of any filing authorization and rejection of that carrier's proposed tariff(s).

(C) Any common carrier who fails to file an anti-rebate certification as required by part 582 of this chapter will be notified by FEDERAL REGISTER publication and by certified mail that if, within forty-five (45) days from the date the certified notice is mailed, the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter, or file the required anti-rebate certification, its tariff(s) will be cancelled and attempted filings rejected.

(D) In the event common carrier rates are published in one or more conference tariffs, the name of every common carrier who did not file an anti-rebate certification will be stricken from the list of carriers participating in those conference tariffs.

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 502 and 582 of this chapter. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 505 and 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by FEDERAL REGISTER publication and certified mail, return receipt requested, that its tariff(s) have been canceled and/or its name has been stricken from conference tariff(s).

(2) *Domestic offshore commerce of the United States under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.* (i) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any Tariff Rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(ii) Only tariffs of persons engaged in common carriage by water may be filed. Common carriers subject to the Shipping Act, 1916, are those vessel operating and non-vessel-operating carriers providing transportation by water between:

(A) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(B) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(C) Alaska and Hawaii;

(D) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(E) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(3) *Both foreign and domestic offshore commerce*—(i) *Terminal operators.* (A) Every person carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in paragraph (a)(3) of this section, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file, and shall keep open for inspection at all their places of business, a schedule or tariff showing all their rates, charges, Tariff Rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at their terminal facilities,

(B) Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in paragraph (c)(3)(i)(A) of this section.

(C) Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, are not relieved of such requirements by this part.

(ii) [Reserved]

(4) *Electronic filing.* All tariffs filed under this part shall be properly formatted as provided in this part and in the ATFI ''Batch Filing Guide,'' under § 514.8(c)(3).

(d) *Rejection of tariff data.* (1) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1916, 1933 or 1984 Acts or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

(2) Any tariff matter submitted for filing, including service contracts and their essential terms, which fails in any respect to conform with the applicable shipping statutes, with the provisions of this part, or with a Commission Order, is subject to rejection or partial rejection after filing. Cause for rejection includes failure of the filing domestic offshore carrier to comply with the provisions of Rule 67 of the Commission's Rules of Practice and Procedure (46 CFR 502.67) and/or part 552 of this chapter.

(3) Notices of rejection, with reasons therefor, will be made available to filers through electronic mail and, if not accessed by the filer within a certain period of time, will be sent by regular U.S. mail. For service contracts and/or essential terms, the Commission may also notify the filing party of the Commission's intent to reject within 20 days of filing. See § 514.7(g). (Note: There will be no notice of rejection for attempted filings which are not accepted into the system because they are not syntactically correct for processing.)

(4) Upon rejection, rejected tariff matter is void and its use is unlawful.

(5) After rejection, the filer is responsible for putting its tariff in order. See § 514.9(b)(19)(iv).

(6) The ''Status'' function on many ATFI screens displays a pop-up window that shows the status of a filed tariff item, including a code that identifies whether it was accepted or rejected, a description of the code, and comments entered by an FMC Examiner regarding a rejected item.

(e) *Penalties; suspension of tariff material.* (1) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful.

(2) Foreign commerce. Pursuant to section 13 of the Shipping Act of 1984, operating without an effective tariff on

file or charging rates not in conformance with such a tariff is subject to a civil penalty of not more than $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months. See §514.19.

(3) Domestic offshore commerce. (i) The Commission may at any time direct the cancellation of tariff matter which does not conform to the 1916 Act or this part. See §514.19.

(ii) Violations of the provisions of this part are subject to a civil penalty of not more than $1,000 for each day such violation continues.

(f) *Filing fee.* Under the authority of the Independent Offices Appropriation Act, 31 U.S.C. 9701, the Commission assesses a filing fee for ATFI filings. See §514.21(i) for filing fees.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 39623, Sept. 1, 1992; 59 FR 63908, Dec. 12, 1994; 60 FR 27229, May 23, 1995]

§514.2 Definitions.

The following definitions (in alphabetical order) shall apply to the regulations of this part and to all tariffs and service contracts filed pursuant to them, unless otherwise indicated by the context of this part.

Across-the-board increase (domestic offshore commerce) means any change in rates, fares, or charges in domestic offshore commerce which will: (1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent. See §514.9(b)(1).

Alternate port service means substituted service whereby the vessel-operating common carrier for whom the tariff object is filed uses someone else to perform the transportation between the point at which the cargo was tendered by the shipper and the port at which the cargo is actually loaded on the filing carrier's vessel, or between the port at which the cargo is discharged from the filing carrier's vessel and the point at which the cargo is to be tendered to the consignee.

Amendment means any change, alteration, correction or modification of an existing tariff.

Assessorial (accessorial) means a particular service or condition, other than the basic transportation, which is usually described in a commodity description, TLI, or Tariff Rule, and for which a charge may be added to the basic ocean freight rate. See §514.10(d).

Assessorial charge means the amount determined for an assessorial service or condition that is added to the basic ocean freight rate. See §514.10(d).

Assessorial charge calculation means an algorithmic representation of the conditions and mathematical steps necessary to calculate an assessorial charge.

Associative check means an automated comparative check of data filed with ATFI to check for logical conformity with Commission tariff filing rules and previously filed tariff matter. See §514.8(n)(1)(iii).

ATFI means the Commission's Automated Tariff Filing and Information System, a computer-based system for creating, filing, processing and retrieving ocean freight and terminal tariffs and the essential terms of service contracts.

Availability (period of) means the process of offering essential terms of a service contract to all similarly situated shippers who can accept them for the purpose of entering their own service contract (for a period of 30 days or more). See §514.17(d)(3).

Batch filing means the process by which a tariff filer can transmit to the Commission tariff matter which has been created on the filer's own computer. (Also see ''on-line batch filing,'' ''in-bulk batch filing'' and ''tape batch filing''). See §514.8 (c), (d)(3), and (l).

Batch Filing Guide means an ATFI user document, available upon request from the Commission, which defines the procedures and technical requirements for batch filing. See §514.8(d)(3).

BTCL means the Commission's Bureau of Tariffs, Certification and Licensing.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the tariff filing requirements of this part.

Checking means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same. See ''terminal services.'' See § 514.15(b)(23).

Chemical parcel tanker. See ''common carrier.''

Co-loading (foreign commerce) means the combining of cargo, in the import or export commerce of the United States, by two or more NVOCCs for tendering to an ocean carrier under the name of one or more of the NVOCCs. See § 514.15(b)(14).

Combination rate means a rate for a shipment moving under intermodal transportation which is computed by the addition of a TLI, and an inland rate(s) applicable from/to inland point(s) not covered by said TLI.

Commission means the Federal Maritime Commission.

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity, any applicable assessorial, related assessorial charges if any, and the commodity index entries by which the commodity is referenced.

Commodity description number means a 10-digit number used to identify a commodity description. See § 514.13(a).

Commodity index means an index of the commodity descriptions contained in a tariff. See § 514.13(a).

Commodity rates means rates for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published. See § 514.13(a).

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

(1) Assumes responsibility for the transportation from 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.

As used in this paragraph, ''chemical parcel-tanker'' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

Conference means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement. For the term ''marine terminal conference (agreement),'' see § 514.3(a)(8) and §§ 560.307(b) and 572.307(b) of this chapter.

Conformity checks means all types of system checks to determine compliance with the criteria of syntax checks (data form and format), validity checks (reference tables' entries), and associative checks.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to

withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

Contract party means any party signing a service contract as a common carrier, conference, shipper or shippers' association. See §§ 514.7 and 514.17.

Controlled common carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier. See §§ 514.3(a)(2); 514.3(b); 514.4(c); 514.9(b); and 514.13(b)(7).

Data Element Dictionary (DED) means a list of the data fields and the values, terms, and expressions allowable for each field. The ATFI-specific Data Element Dictionary is a section in the ATFI ''Batch Filing Guide.'' See § 514.8(d)(3).

Destination scope means a location group in a tariff detailing the allowable destinations for TLIs defined in that tariff. See §§ 514.11(b)(10) and 514.13(b).

Dockage means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed. See also ''terminal services.''

Domestic offshore carrier means a carrier engaged in the transportation by water of cargo and/or passengers on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District or possession. See § 514.1(c)(2)(ii).

Domestic offshore commerce means commerce that may be engaged in by domestic offshore carriers. See § 514.1(c)(2)(ii).

Domestic offshore tariff means a tariff of port to port rates for transporting in domestic offshore commerce.

Dummy algorithm. See ''null linkage.''

Edit checks. See ''conformity checks.''

Effective date means the date (12:01 a.m.) upon which a filed tariff or tariff element is scheduled to go into effect by the filer. See §§ 514.9(a) and 514.10(a)(3).

Equipment interchange agreement means a sample agreement which includes the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment following interchange, including cargo containers, trailers and chassis. It also includes the standard free time allowed, and detention or similar charges assessed. See §§ 514.3(a)(1) and 514.15(b)(21).

Equipment interchange Tariff Rule or *Equipment interchange tariff* means either a Tariff Rule or general reference tariff which contains the terms and conditions, including standard free time and charges, governing the use of carrier equipment following interchange, and may incorporate an equipment interchange agreement and the filer's exceptions thereto. See §§ 514.12(c)(3) and 514.15(b)(21).

Essential terms. See ''statement of essential terms.''

Essential terms publication means the single publication which is maintained by each carrier or conference for service contract(s) and which contains statements of essential terms for every such contract. See § 514.17(b).

Expiration date means the last day, after which the entire tariff or tariff element (e.g., TLI) is no longer in effect. See ''thru date'' and § 514.10(a).

File or filing (of service contracts or amendments thereto) means actual receipt at the Commission's Washington, DC offices. See § 514.7.

File or filing (of tariff matter) means the electronic entering of tariff matter into the ATFI computer after receipt by electronic means or physical delivery of magnetic tape(s). See § 514.8(c).

Filing date (established by the ATFI system) means the date any tariff matter is electronically transmitted to and entered into the system as a successful transmission, or physically delivered to a designated location(s) and date-time stamped. See §§ 514.8(c) and 514.10(a)(2).

FMC examiner means an employee of the Commission who reviews tariffs to ensure that they conform to the shipping statutes and the regulations set by the Commission.

Foreign commerce means that commerce under the jurisdiction of the 1984 Act.

Forest products means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls. See §§ 514.3(b)(1) and 514.7(c).

Free time means the specified period during which cargo may occupy space assigned to it on terminal property free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel. See ''terminal services'' and § 514.15(b)(23). ''Free time'' is also accorded to cargo at destination rail terminals and destination motor terminals located at inland points, as well as at container freight stations and other off-dock delivery points removed from the terminal. Additionally, ''free time'' is a term commonly used in connection with use of carrier equipment at both origin and destination under, for example, equipment interchange tariffs.

Freight forwarder. See ''ocean freight forwarder.''

General decrease (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in a decrease in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in a decrease in gross revenues of said carrier for the particular trade of not less than 3 percent. See § 514.9(b)(7).

General increase (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in an increase in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in an increase in gross revenues of said carrier for the particular trade of not less than 3 percent. See § 514.9(b)(7).

Geographic area means the general location from which and/or to which cargo subject to a service contract will move in through service. See § 514.17.

Handling means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle. See ''terminal services'' and § 514.15(b)(23).

Harmonized Code means the coding provisions of the Harmonized System. See § 514.13(a).

Harmonized System means the ''International Convention on the Harmonized Commodity Description and Coding System,'' which may be obtained from the Customs Cooperation Council (''CCC'') in Brussels, Belgium, or any of its authorized distributors. See § 514.13(a).

Heavy lift means the service of providing heavy lift cranes and equipment for lifting cargo. See ''terminal services'' and § 514.15 (b)(4) and (b)(23).

In-bulk batch filing means batch filing by tariff publishers using the ATFI transaction sets to create files on magnetic tape for physical delivery to the Commission's ATFI Computer Center. Also referred to as tape batch filing. See § 514.8(c)(3).

Inland point means any city and associated state/province, country, U.S. ZIP code, or U.S. ZIP code range, which lies beyond port terminal areas. (A city may share the name of a port:

the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.) See § 514.15(b)(1).

Inland rate means a rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation. See § 514.15(b)(1).

Inland rate table means a structured matrix of geographic inland locations (points, U.S. ZIP code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other axis, with the inland rates specified at the matrix row and column intersections. See § 514.15(b)(1).

Interactive filing means the process by which a tariff filer accesses the ATFI system via dial-up, using telecommunications links, a modem and terminal, and interacts with the system on a transaction by transaction basis to retrieve its own tariff information, create tariff filings, and verify previous filings. See § 514.8(c)(1).

Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal, and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter of carriers, conferences and terminal operators which has been filed in the ATFI database. See § 514.20.

Intermodal service. See ''intermodal transportation.''

Intermodal transportation means continuous transportation involving more than one mode of service, (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term ''intermodal transportation'' can apply to ''through transportation (at through rates)'' or transportation on through routes using combination rates. See § 514.15(b)(1).

Joint rates means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers. See § 514.15(b)(1).

Loading and *unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility. See ''terminal services'' and § 514.15(b)(23).

Local rates means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement. See § 514.15(b)(1).

Location group means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TLI origin and/or destination. See §§ 514.10(b) and 514.11(b)(10).

Log in or *log on* means entering the ATFI system to perform functions such as filing or retrieving, and requires certain formalities, such as password, ID, etc. See § 514.8(f).

Log off or *log out* means exiting the ATFI system after the user is finished with functions such as filing or retrieving. Automatic log off or logout can occur after certain periods of time. See § 514.20(c)(2).

Loyalty contract (foreign commerce) means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference. See § 514.15(b)(27).

Marine terminal services agreement means an agreement as defined in § 560.308(a) or § 572.310(a). See § 514.3(a)(8).

1984 Act means the Shipping Act of 1984.

1916 Act means the Shipping Act, 1916, as amended (including the Intercoastal Shipping Act, 1933, and the Transportation Act of 1940).

Non-vessel-operating common carrier (or NVOCC) (foreign commerce) means 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.

Null linkage or dummy algorithm means a functionality to label and link assessorial charges in full-text format to ATFI objects, such as TLIs and commodities. See § 514.10(d).

Ocean common carrier (foreign commerce) means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

Ocean freight forwarder (foreign commerce) means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

On-line batch filing means the process by which a filer transmits tariff information, properly formatted in accordance with published ATFI transaction set formats, to the ATFI system as a ''batch'' of transactions via dial-up telecommunications links from its own computer. See § 514.8(c)(2).

Open for public inspection means the maintenance, in electronic or paper form, of a complete and current set of the tariffs used by a common carrier, conference or terminal operator, or to which it is a party, in its office(s). See § 514.8(k).

Open rate (foreign commerce) means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rate on such commodity or commodities. See §§ 514.13(b)(19) and 514.15(b)(15).

Organization name means an entity's name on file with the Commission and for which the Commission assigns an organization number. See § 514.11(a).

Organization record means information regarding an entity, including its name, address, organization number, carrier type, and the filing and effective dates of the organization record. See § 514.11(a).

Origin scope means a location group defining the geographic range of cargo origins covered by a tariff. See §§ 514.11(b)(10) and 514.13(b).

Owner (of tariff material) means the carrier, conference or terminal establishing the rates and charges in tariff material and on whose behalf the tariff material is filed. See ''publisher (tariff).''

Page-based tariff means the traditional type of tariff in which rates are listed on the pages of a paper document. See § 514.8(k)(2).

Person includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

Point of rest means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading. See § 514.15(b)(23).

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement. See §§ 514.15(b)(1), (b)(13) and (b)(23).

Port range means those ports in the country of loading or unloading of service contract cargo that are regularly served by the contracting carrier or conference, as specified in its tariff of general applicability, even if the contract itself contemplates use of but a single port within that range. See §§ 514.7 and 514.17.

Port terminal facilities means one or more structures comprising a terminal unit, which include, but are not limited to wharves, warehouses, covered and/or open storage spaces, 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 in the interchange of same between land and water carriers or between two water carriers. See § 514.15(b)(23).

Post, posted, posting (of tariff matter—domestic offshore commerce) means the maintenance of a complete, up-to-date tariff, in electronic or paper form, at the office(s) of each carrier party to the tariff under conditions assuring its availability for inspection by members of the public. See § 514.8(k).

Practices. See ''tariff.''

Project rates means rates applicable to the transportation of materials and

equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also including disaster relief projects. See § 514.13(a)(5).

Proportional rates means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement. See § 514.15(b)(1).

Publisher (tariff) means an organization authorized to file or amend tariff information.

Rate means a price quoted in a tariff for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated effective date or within a defined time frame. See § 514.13(b)(19).

Retrieval. See ''interactive retrieval.''

Round trip excursion voyage means a single voyage in domestic offshore commerce which originates and terminates at the same port, does not permanently disembark passengers at any intermediate port, and does not call at any port outside of the United States, its territories, commonwealths, districts or possessions. See § 514.3(a)(5).

Rules (in a tariff, i.e., Tariff Rules) means the stated terms and conditions set by the tariff owner which govern the application of tariff rates, charges and other matters. See § 514.15.

Scope means the location group(s) (geographic grouping(s)) listing the ports or ranges of ports to and from which the tariff's rates apply. See § 514.11(b)(10).

Service contract means a contract between a shipper or shippers' association and an ocean common carrier or conference, in which the shipper makes a commitment to provide a certain minimum quantity of its cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as 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 either party. See § 514.7.

Service contract records means such documents and information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met. See § 514.7(m).

Shipment means all of the cargo carried under the terms of a single bill of lading.

Shipper means an owner or person for whose account the ocean transportation of cargo is provided and includes the person to whom delivery is to be made (consignee).

Shippers'association (foreign commerce) 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.

Special case number means a code number assigned by the Commission to a specific filer for a limited, designated purpose, such as for a particular rate (TLI) increase to go into effect on less than statutory notice by special permission or for other ATFI associative checks to be bypassed. See § 514.9(b)(19).

Special permission means permission, authorized by the Commission, for certain tariff filings that do not conform with applicable regulations, usually involving effectiveness on less than the normal statutory notice.

Specimen bill of lading means a sample bill of lading contained in a tariff for example purposes, which, in ATFI, is achieved by electronically entering the terms contained on the carrier's bill of lading in the appropriate Tariff Rule. See § 514.15(b)(8).

Statement of essential terms means the concise summary of all essential terms of a service contract required to be filed with the Commission and made available to the general public in tariff format by the carrier or conference in its Essential Terms Publication. See § 514.17.

Submit or submission (foreign commerce—service contracts) means ''file'' or ''filing'' under this section. See § 514.7.

Substituted service means the use of transportation performed by someone other than the carrier for whom the

tariff object is filed. See ''alternate port service,'' ''transshipment,'' and §§ 514.15(b)(1) and (b)(13).

Syntax check means an automatic system review of items in filings to check conformity with data element type and size, and other format requirements outlined in the ''Batch Filing Guide.'' See § 514.8(n)(1)(i).

Tape batch filing. See ''in-bulk batch filing.''

Tariff means a publication containing the actual rates, charges, classifications, Tariff Rules, regulations and practices of a common carrier, conference of common carriers, or marine terminal operator. The term ''practices'' refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or marine terminal operator, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

Tariff amendments. See ''amendment.''

Tariff filing means any tariff or modification thereto which is received by the Commission as properly filed pursuant to these rules. See ''file, filing'' and § 514.8(c).

Tariff line item (TLI) (with a 14-digit number) means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions, such as container size or temperature. See § 514.13(b).

Tariff matter, tariff material, tariff publication means a tariff and the essential terms of service contracts, or any portion and amendment thereof, tendered for filing with the Commission pursuant to this part.

Tariff of general applicability (foreign commerce—service contracts) means the effective tariff, on file at the Commission under this part, that would apply to the transportation in the absence of a service contract. See §§ 514.7(h)(1)(iv) and 514.12(a).

Tariff record means a collection of tariff identification data that include the name and type of the tariff, the tariff number, publishing office, units of weight and measure, and the date the tariff was filed, the date it became effective, and the date it expires. See § 514.11(a).

Tariff Rule. See ''rules (in a tariff)'' and § 514.15.

Terminal services includes checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and, wharf demurrage, as defined in this section. The definition of terminal services set forth in this section shall be set forth in tariffs filed pursuant to this part except that other definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs. See § 514.15(b)(23).

Terminal storage means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made. See ''terminal services'' and § 514.15(b)(23).

Termination date means the expiration date of a service contract or the date the service contract is terminated for reasons not specifically set forth in the contract. See § 514.17(d).

Through rate (domestic offshore commerce) means a total charge for transportation from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates. See § 514.15(b)(1).

Through rate (foreign commerce) means the single amount charged by a common carrier in connection with through transportation. See § 514.15(b)(1).

Through route (domestic offshore commerce) means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by:

(1) A single domestic offshore carrier offering service between port terminal areas;

(2) Two or more domestic offshore carriers; or

(3) One or more domestic offshore carriers in connection with one or more other carriers. See § 514.15(b)(1).

Through transportation (domestic offshore commerce) means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate or combination rate is assessed and which is offered or performed by one or more carriers, at least one of which is a domestic offshore carrier. Through transportation involving joint rates with services subject to ICC jurisdiction is not subject to the jurisdiction of the FMC. See § 514.3(a)(3)(ii).

Through transportation (foreign commerce) means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port. See § 514.15(b)(1).

Thru date means the date (11:59 p.m.) after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. See ''expiration date'' and § 514.10(a)(5).

Time/volume rate (foreign commerce) means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time. See §§ 514.13(b)(19) and 514.15(b)(26).

TLI. See ''tariff line item.''

Trade name(s) means a name or names that a tariff filer uses for conducting business, but which is not necessarily its legal name. This is also known as a ''d/b/a'' (doing business as) name. See § 514.11.

Traditional tariff means a page-based tariff in which all of the tariff components are contained on the pages of a paper document. See § 514.8(k)(2).

Transaction set means a pre-defined, ATFI-compatible data format used for electronic batch filing (electronic data interchange or EDI) of tariff information. When using third-party software for batch filing, all data must be formatted into the appropriate transaction sets before it can be batch filed to the Commission through the ATFI system. The transaction set formats are available to the public in the ATFI ''Batch Filing Guide.'' See § 514.8(d)(3).

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is a vessel-operating carrier subject to the FMC's jurisdiction. See § 514.15(b)(13).

Usage means the use of terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified. See ''terminal services'' and § 514.15(b)(23).

Validity check means a system review of certain items in filings to check conformity with reference tables outlined in the transaction sets and standard glossaries employed in ATFI, e.g., origin and destination locations must be correctly spelled and be members of the ATFI locations glossary. See § 514.8(n)(1)(ii).

Via port(s) means the port or port group at which a vessel calls for through transportation of cargo from another origin and/or to another destination.

Wharf demurrage means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage. See ''terminal services.''

Wharfage means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf and does not include charges for any other service. See ''terminal services'' and § 514.15(b)(23).

Workdays (domestic offshore commerce) means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia. See § 514.9(b)(24)(ii).

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 57 FR 46322, Oct. 8, 1992; 58 FR 27, Jan. 4, 1993]

§ 514.3 Exemptions and exclusions.

Applications for exemptions are governed by § 502.69 of this chapter. The following exemptions are granted from certain described requirements of this part:

(a) *Certain services involved in the following:*

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers, are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part. See §§ 514.12(b)(3) and 514.15(b)(21).

(2) *Controlled common carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers (See § 514.4(c)) when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex ''A'' of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph (see § 514.9(b)(24)(i)(A));

(iv) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States, including its districts, territories and possessions (see § 514.9(b)(24)(i)(B)); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers (see § 514.9(b)(24)(i)(C)).

(3) *Interstate Commerce Commission (''ICC'').* Transportation in domestic offshore commerce which is subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Ch. 105 is not subject to the tariff filing requirements of the 1916 Act and the rules of this part.

(4) *Marine terminal operations of DOD.* When the Department of Defense (including the military department and all agencies of the Department of Defense) carries on the business of furnishing wharfage, dock, warehouse, or other terminal facilities, as defined in § 514.2, it shall be exempt from the terminal tariff filing and publication requirements of this part.

(5) *Round trip passenger excursion voyages in domestic offshore commerce.* Round trip passenger excursion voyages in domestic offshore commerce are exempt from the tariff filing requirements of the 1916 Act and the rules of this part.

(6) *Certain small vessels in domestic offshore commerce.* Transportation in domestic offshore commerce by vessels with a cargo carrying capacity of 100 tons or less, or with an indicated horsepower of 100 or less, is exempt from the tariff filing requirements of the 1916 Act and the rules of this part, but only if such vessels:

(i) Are not employed by or under the common control or management of a domestic offshore carrier which operates vessels in excess of these limits;

(ii) Are not operated as part of a through route with another domestic offshore carrier; and

(iii) Are not performing lighterage services in connection with or on behalf of another domestic offshore carrier.

(7) *Terminal barge operators in Pacific Slope States.* Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States are exempt

from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part, where:

(i) The cargo is moving between a point in a foreign country or a noncontiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

(8) *Certain terminal services.* (i) The filing requirements of this part do not apply to rates and charges for storage of cargo and services incidental thereto by public warehousemen pursuant to storage agreements covered by issued warehouse receipts.

(ii) Rates, charges, rules and regulations governing terminal services provided to and paid for by common carriers by water pursuant to a marine terminal services agreement as defined in § 560.308(a) or § 572.310(a) of this chapter, need not be separately filed in tariffs for the purposes of this part, on condition that such rates, charges, rules and regulations are not determined through a marine terminal conference agreement, as defined in §§ 560.307(b) and 572.307(b) of this chapter.

(iii) Rates, charges, rules and/or regulations which but for paragraph (a)(8)(ii) of this section would be subject to the tariff-filing requirements of this part may not unilaterally impose exculpatory provisions of a nature prohibited by § 514.4(b)(3)(ii).

(9) *Terminal tariffs; electronic format requirements.* Marine terminal tariffs are exempt from the commodity-description and TLI-object requirements of this part, but only to the extent necessary to accommodate electronic filing of such tariffs in full-text format in Tariff Rule 34 (§ 514.15(b)(34).

(10) *NVOCCs in domestic offshore commerce.* Non-vessel-operating common carriers (''NVOCCs'') providing transportation in domestic offshore commerce are exempt from the provisions of section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845, and thus, from the suspension provisions of § 514.19(a). The reasonableness of NVOCC rates in domestic offshore commerce may be determined under the provisions of section 18 of the 1916 Act, 46 U.S.C. app. 817.

(b) *Certain cargo types*—(1) *Bulk, forest products, etc.* (i) Except as provided in paragraphs (b)(1)(ii) and (iii) of this section, this part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste in foreign tariffs, terminal tariffs or service contracts.

(ii) Marine terminal operators, carriers or conferences which voluntarily file tariff or service contract provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions or service contracts.

(iii) An exempt commodity listed in paragraph (b)(1) of this section may be included in a service contract filed with the Commission only if:

(A) There is a tariff of general applicability for the transportation which contains a specific commodity rate for the exempted commodity; or

(B) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries is exempt from the filing requirements of the 1984 Act and the rules of this part.

(3) *Used military household goods—NVOCCs.* Transportation of used military household goods and personal effects by non-vessel-operating common carriers is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

(4) *Department of Defense cargo in foreign commerce.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by

the Military Sealift Command (''MSC'') and published in a rate guide, quotation or tender is exempt from the tariff filing requirements of the 1984 Act and the rules of this part. An exact copy of the rate guide, quotation or tender, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

(5) *Used household goods—General Services Administration.* Transportation of used household goods and personal effects by non-vessel-operating common carriers shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

(c) *Certain locations in foreign commerce*—(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the 1984 Act and the rules of this part:

(i) *Prince Rupert and Alaska*—(A) *Vehicles.* Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(*1*) Carriage of property is limited to vehicles;

(*2*) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(*3*) The vessel operator does not move the vehicles on or off the ship; and

(*4*) The common carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other common carrier.

(B) *Passengers.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, only if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(ii) *British Columbia and Puget Sound Ports; rail cars*—(A) *Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, but only if:

(*1*) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(*2*) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(B) *Bulk; port-to-port.* Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, only if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers, except that:

(*1*) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada; and

(*2*) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

(iii) *Incan Superior, Ltd.* Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario, and Superior, Wisconsin, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(d) *Domestic offshore commerce—(1) Notice requirements; general.* Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(i) On one day's notice, any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption may not apply to any decrease which is part of a ''general decrease in rates'' as defined by section 1 of the 1933 Act. See § 514.2; and

(ii) On seven workdays' notice, any new or amendatory tariff matter that results in an increased cost to the shipper. This exemption may not apply to any increase which is part of a ''general increase in rates'' as defined by section 1 of the 1933 Act (see § 514.2), or any increase which is part of an ''across-the-board'' increase in rates as defined in § 514.2.

(2) *Alaska*—(i) *Bethel—Kuskokwim Bay.* Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk is exempt from the filing requirements of the 1916 Act and the rules of this part.

(ii) *Seattle—S.E. Alaska on State-of-Alaska operated vessels.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington, and ports in Southeastern Alaska, is exempt from the filing requirements of the 1916 Act and the rules of this part, only if said personal vehicles and personal effects are not transported for the purpose of sale, lease, or other commercial activities.

(3) [Reserved]

(4) *Puerto Rico*—(i) *Bulk liquid cargo.* Transportation between the continental United States and Puerto Rico of bulk liquid cargoes in quantities of not less than 200,000 gallons per shipment (i.e., a single shipper to a single consignee) is exempt from the filing requirements of the 1916 Act and the rules of this part, only if such shipments are carried in tank vessels designed exclusively for bulk liquid cargoes and which are certified under regulations approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3306.

(ii) [Reserved]

(5) [Reserved]

(e) *Electronic filing.* A temporary exemption from the electronic filing requirements of this part may be obtained by application under § 514.8(a), but, during the period of such exemption and unless otherwise exempted by this part, tariff material is required to be filed in paper format under parts 515, 550, 580 and/or 581 of this chapter.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 57 FR 44700, Sept. 29, 1992; 58 FR 28790, May 17, 1993; 60 FR 44437, Aug. 28, 1995]

§ 514.4 Content, filing and cancellation of tariff material; general.

(a) *Effectiveness of new or initial and conference tariffs in the domestic offshore and foreign trades.* Unless otherwise provided by the Commission or this part, all conference and carrier tariff material tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which complies with the appropriate notice period(s) prescribed in § 514.9 or in other sections of this part. The notice period between filing and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the day after the notice period expires.

(b) *Prohibitions*—(1) *Foreign language tariffs.* (i) Tariffs and essential terms of service contracts in foreign languages

will not be accepted. Filers may, however, include foreign language commodity descriptions, TLI notes, and commodity index entries, but only if:

(A) The non-English entries follow the English entries; and

(B) The non-English text is precisely translated from the English.

(ii) The English wording shall have precedence in any question of interpretation.

(2) *Ambiguous, duplicating and conflicting provisions.* No person may publish and file any tariff matter which contains ambiguous language or duplicates or conflicts with any other tariff matter on file with the Commission in which such person is a party or participant, whether filed by such person or by an authorized agent.

(3) *Limiting or qualifying provisions*—(i) *Limitation of liability.* Tariffs may not contain Tariff Rules purporting to limit liability for loss or damage in a manner that is prohibited by applicable statute or regulation.

(ii) *Exculpatory tariff provisions.* No terminal tariff may contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

(iii) *Rates in other tariffs.* Except as specifically allowed in this part (see § 514.12):

(A) No rate tariff may require reference to or be governed by another rate tariff; and

(B) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(iv) *Modification of essential terms.* Essential terms of service contracts may not contain any provision permitting modification by the parties other than in full compliance with this part.

(c) *Controlled common carriers*—(1) *Controlled common carrier rates*—(i) *Level of rates and charges.* Except as provided in § 514.3(a)(2), no controlled common carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, Tariff Rules, or regulations in those tariffs. An unjust or unreasonable classification, Tariff Rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(ii) *Commission disapproval.* The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, Tariff Rules or regulations that the controlled common carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled common carrier to demonstrate that its rates, charges, classifications, Tariff Rules or regulations are just and reasonable. Rates, charges, classifications, Tariff Rules or regulations filed by a controlled common carrier that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(iii) *Effective date of rates.* The rates, charges, classifications, Tariff Rules or regulations of controlled common carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.

(2) *Classification as a controlled common carrier.* (i) The Commission will notify any common carrier of its classification as a controlled common carrier and enter such classification in ATFI.

(ii) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(iii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

(d) *Duty and authority to file*—(1) *General procedure.* (i) Except as provided in paragraph (d)(1)(ii) of this section, authority to obtain or delegate authority for using USERID and password under § 514.8(f) for filing and amending particular types of tariff material, as well

as authority to change filing and editing authority, must be requested by a responsible official of the tariff owner in writing, using the registration form in exhibit 1 to this part, showing (or attaching) all necessary approvals and paying the appropriate fee under § 514.21.

(ii) In an emergency, a person, already authorized to maintain and edit its firm's organization record under § 514.11(a), may change a ''publisher'' under § 514.11(a)(9)(iii), verbally notify BTCL, and promptly submit the proper documents.

(2) *Domestic offshore tariffs.* (i) Tariffs in domestic offshore commerce may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein. When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be provided.

(ii) The request for filing authority shall state that a tariff agent has been appointed as of a particular date, identify the agent by name and business address, indicate whether and under what circumstances any other person is authorized to serve as an alternate agent, and specifically set forth the agent's powers and duties to act for the carrier in tariff matters. Only one alternate agent may be appointed.

(iii) More than one delegation of authority covering any one tariff is prohibited, except that governing tariffs filed pursuant to § 514.12 may be the subject of separate delegations. Submission of a subsequent delegation of authority covering a tariff, governing tariff or group of tariffs, shall automatically revoke any earlier delegation as to that tariff or tariffs on the day the subsequent delegation is filed, as evidenced by the Commission's receipt notation.

(iv) A delegation of authority to a tariff agent may be revoked in whole or in part by filing a written revocation which clearly identifies the delegation of authority and the particular powers and duties being revoked.

(v) Should a carrier enter receivership, or otherwise come under the control of a trustee, the duty and authority to file tariff material shall be upon the receiver or trustee appointed until the receivership/trusteeship is terminated.

(3) *Foreign tariffs.* (i) Tariffs in foreign commerce shall be filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conference. In the alternative, filing may be accomplished through an agent authorized to act for such common carrier or conference.

(ii) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(iii) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, the request shall set forth the exact limits of the agent's authority.

(4) *Conference-related situations in foreign commerce*—(i) *Admission to membership.* Before a common carrier is admitted to membership in a conference, it shall electronically file notice of cancellation of any independent tariff applicable to the trade served by the conference, effective upon the date of admission to conference membership, making reference to the conference tariff and where the conference tariff may be examined. The filing of the independent tariff(s) and admission to conference membership may become effective upon the date of filing, except that, unless Special Permission is granted pursuant to § 514.18, cancellation of the independent tariff and admission to conference membership requires 30 days' notice if:

(A) The carrier is a controlled carrier, or

(B) The addition of the carrier to the conference would result in a rate change from the carrier's independent tariff which causes an increase in cost to the shipper.

(ii) *Duties of members.* (A) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the 1984 Act with regard to keeping tariffs open for public inspection. See § 514.8(k)(1).

(B) A common carrier's obligation to file tariffs pursuant to section 8(a) of the 1984 Act and this part must be carried out as follows:

(*1*) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(*2*) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(*i*) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(*ii*) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(C) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(iii) *Independent action rates of controlled carriers.* Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(5) *Service contracts and essential terms in foreign commerce.* (i) As further provided in paragraph (d)(5)(ii) of this section, the duty under this part to file service contracts, statements of essential terms and notices, and to maintain an essential terms publication under § 514.17, shall be upon:

(A) A service contract signatory carrier which is not a member of a conference for the service covered by the contract; or

(B) The conference which:

(*1*) Is signatory to the service contract; or

(*2*) Has one or more member carriers signatory to a service contract for a service otherwise covered by the conference agreement.

(ii) When a conference files a service contract for and on behalf of one or more of its member lines and the contract covers service from, to or between ports and/or points not included within the scope of the conference, the complete text of the statement of essential terms shall be simultaneously filed in the essential terms publications of both the conference(s) and carrier(s) involved, which shall comply with all other essential terms publication filing and maintenance requirements under §§ 514.7 and 514.17.

(6) *Transfer of operations or control; changes in name or conference membership.* (i)(A) Whenever a conference or common carrier with an individual tariff on file changes its name or transfers operating control to another entity or person, the person who will thereafter manage the conference or operate the common carrier service shall submit a written application to the FMC. The application shall be accompanied by appropriate completed ATFI User Registration Form(s) (exhibit 1 to this part), if needed, and with the proper user charge under § 514.21(c) (for filer initial registration), to procedurally transfer the tariff to the succeeding person or firm. Subsequent amendments to such tariffs shall be in the name of the new conference or common carrier, as applicable.

(B) Requests to procedurally transfer only part of the service extended under a given rate tariff will not be granted.

(ii) Domestic offshore tariffs naming participating carriers shall be amended within 90 days whenever any participating carrier transfers its operations, transfers control of its business, or changes its name, and the successor carrier continues to participate in the service. The amendment shall delete all references to the transferring carrier (or old name) and substitute references to the successor carrier (or new name) in their place.

(iii) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(iv) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

(e) *Cancellation*—(1) *Tariffs.* (i) An entire tariff may be canceled by the filer, or by the Commission for good cause, by appropriately changing the expiration date in the tariff record. See §514.11(b).

(ii) Cancellation of a tariff due to a cessation of all service by the publishing carrier between the ports or points listed in the canceled tariff may take effect on the same day it is filed.

(iii) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than for seasonal discontinuance) shall be canceled within 60 days after the cessation of operations.

(2) *Essential terms.* The statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired. In the event a contract is terminated under §514.7(l)(1)(ii), the effective date of the termination shall be used as the date of cancellation (contract termination date under §514.17(d)(5)).

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992]

§§514.5—514.6 [Reserved]

Subpart B—Service Contracts

§514.7 Service contracts in foreign commerce.

(a) *Scope and applicability.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves and amendments thereto (incorporating mandatory essential terms as described in §514.17 and confidential names of shippers, etc.), as well as certain related notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality.* All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

(c) *Exempt commodities.* Except as provided in paragraphs (c)(1) and (c)(2) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(1) *Inclusion in service contracts.* An exempt commodity listed in this paragraph may be included in a service contract filed with the Commission, but only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the exempted commodity; or

(ii) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Waiver of exemption.* Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those for contracts involving non-exempt commodities.

(d) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under this part and part 583 of this chapter.

(e) *Certification of shipper status*—(1) *Certification.* The shipper contract party shall certify on the signature page of the service contract its shipper status, e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation, and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the

contract. The certification shall be signed by the contract party.

(2) *Proof of tariff and bond.* If the certification completed by the contract party under paragraph (e)(1) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier or conference shall obtain proof that such NVOCC has a tariff and a bond as required under section 8 and 23 of the 1984 Act before signing the service contract. An ocean common carrier or conference can obtain proof of an NVOCC's compliance by consulting a current list published by the Commission of NVOCCs in compliance with the tariff and bonding requirements or by reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24).

(3) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier or conference the proof of compliance required by paragraph (e)(2) of this section prior to any shipments under the contract.

(4) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier or conference executing a service contract shall be deemed to have complied with section 10(b)(15) of the 1984 Act upon meeting the requirements of paragraphs (e)(1) and (e)(2) of this section, unless the ocean common carrier had reason to know such certification or documentation of NVOCC tariff and bonding was false.

(f) *Availability of essential terms.* A statement of the essential terms of each initial and amended service contract, as set forth in tariff format, shall be made available for inspection by the general public pursuant to the requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial or amended service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract or amendment thereto under § 514.17, as may be adjusted under paragraph (j)(4) of this section, except that, where a shipper or shippers' association not a party to the original contract exercises its right to access the amended contract, the minimum volume obligation for the accessing shipper or shippers' association shall be pro-rated according to the relation between the duration of the original (now amended) contract and the duration of the access contract. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

(2) *Me-too requests and replies.* (i) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

(ii) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(3) *Filing of me-too contracts.* The service contract resulting from a request under this section may be implemented as described in paragraph (j)(3) of this section, and no additional statement of essential terms need be filed. The letter transmitting the service contract itself for filing, however, shall indicate that it is a ''me-too'' contract and reference the essential terms FMC File Number. See § 514.17(d)(4)(i).

(4) *Changes in me-too contracts.* In the case of any expressly described subsequent event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 514.17(d)(7)(viii), the new essential term(s) shall be immediately made available in writing to

other shippers and shippers' associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under paragraph (g)(2)(i) of this section.

(g) *Filing of service contract materials.* Authorized persons under § 514.4(d)(5) shall file with BTCL the following:

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in a double envelope, which contains no other material, as follows:

(i) The outer envelope shall be addressed to: ''Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.''

(ii) The inner envelope shall be sealed, contain only the executed contract, and shall state: ''This Envelope Contains a Confidential Service Contract.''

(iii) The top of each page of a filed service contract shall be stamped ''Confidential.''

(2) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission, pursuant to the procedures of paragraph (g)(1) of this section, a detailed notice, within 30 days of the occurrence, of:

(i) The making available of contingent or amended essential terms to similarly situated shippers under paragraphs (f)(1) or (f)(4) of this section;

(ii) Termination under paragraph (l)(1)(ii) of this section by mutual agreement, breach or default not covered by the service contract;

(iii) The adjustment of accounts, by rerating, liquidated damages, or otherwise under paragraph (l) of this section;

(iv) Final settlement of any account adjusted as described in paragraph (g)(2)(iii) of this section; and

(v) Any change to:

(A) The name of a basic contract party under paragraph (h)(1)(v) of this section; or

(B) The list of affiliates under paragraph (h)(1)(vi) of this section of any contract party entitled to receive or authorized to offer services under the contract.

(h) *Form and content.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) *On the first page, preceding any other provisions:* (i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix ''SC'' (see § 514.17(d)(2));

(ii) The ATFI number (''Tariff # _____'') of the carrier's or conference's essential terms publication (See §§ 514.11(b) and 514.17(b));

(iii) A reference to the statement of essential terms numbers, as follows:

(A) ''ET Number _____'' as provided in § 514.17(d)(2)(i); and,

(B) ''FMC File Number_____'' as provided in § 514.17(d)(4)(i).

(iv) The ATFI number(s) (''Tariff # _____'') of the tariff(s) of general applicability;

(v) The typewritten legal names and business addresses of the contract parties; the typewritten legal names of affiliates entitled to access the contract; and the typewritten names, titles and addresses of the representatives signing the contract for the parties. Carriers and/or conferences which enter into contracts which include affiliates must in each instance either:

(A) list the affiliates' business addresses; or

(B) certify that this information will be provided to the Commission upon request within 10 business days of such request (These requirements will apply to previously-filed contracts amended after March 13, 1996). However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates. subsequent references in the contract to the contract parties shall be consistent with the first reference (*e.g.*, (exact name), ''carriers,'' ''shipper,'' or ''association,'' etc.); and

(vi) Every affiliate of each contract party named under paragraph (h)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

(2) *On the second and subsequent pages:* (i) The complete terms of the contract, including:

(A) All essential terms as required under § 514.17, preferably in the order and format prescribed by § 514.17(d);

(B) Other terms of the contract; and

(C) Section 514.7(h)(2)(i)(A) does not apply to a service contract that incorporates by reference all of the associated essential terms filing as published in ATFI, provided that the parties certify that, other than for those provisions set forth in the filed service contract, such essential terms filing sets forth the true and complete contract.[1]

(ii)(A) A description of the shipment records which will be maintained to support the contract; and

(B) The address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under paragraph (m) of this section; and

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Tariff Rule 21 (§ 514.15(b)(21)) and the applicable tariff number only.

(3) *On the signature page:* (i) Signatures of all necessary contract parties; and

(ii) A certification of shipper status in accordance with paragraph (e) of this section.

(i) [Reserved]

[1] See Exhibit II of this part for an example of an abbreviated format service contract.

(j) *Contract rejection and notice; implementation*—(1) *Initial filing and notice of intent to reject*—(i) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(ii) Except for rejection on the ground that the service contract or amendment thereto was not filed within ten days of its essential terms, or other major deficiencies, such as not containing an essential term, the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) *Rejection.* The Commission may reject an initial or amended contract and/or statement of essential terms if:

(i) The initial or amended service contract is not filed within 10 days of the electronic filing of its associated essential terms;

(ii) A mandatory essential term or 30-day me-too notice is missing; or

(iii) Under a notice of rejection pursuant to paragraph (j)(1) of this section, if the objectionable contract or statement of essential terms:

(A) Is not resubmitted within 20 days of the notice of intent to reject; or

(B) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (j)(1)(ii) of this section, but still does not conform to the form, content or filing requirements of the Act or this part.

(3) *Implementation; prohibition and rerating.* (i) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

(ii) When the filing parties receive notice that an initial or amended service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

(A) Further or continued implementation of the service contract is prohibited;

(B) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(C) Detailed notice shall be given to the Commission under paragraph (g)(2) of this section within 30 days of:

(*1*) The rerating or other account adjustment resulting from rejection under this paragraph; and

(*2*) Final settlement of the account adjusted under paragraph (j)((3)(ii)(C)(*1*) of this section.

(4) *Period of availability*. The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section, or on the date of rejection under paragraphs (j)(1)(i) and (j)(2) of this section, whichever occurs first, and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) Modification, correction and cancellation of service contract terms.

(1) *Modifications.* (i) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract and shall be electronically filed with the Commission under § 514.17.

(ii) Amended service contracts shall be filed with the Commission pursuant to paragraph (g) of this section.

(iii) Any shipper or shippers' association that has previously entered into a service contract which is amended pursuant to this paragraph may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected.

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(3) Filing and availability of corrected materials.

(i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(3)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to

continue under that contract with or without the corrected essential terms.

(4) *Cancellation.* See paragraph (1) of this section and § 514.4(e)(2).

(l) *Accounting adjustments; rerating; notice*—(1) *Account adjustment; rerating*—(i) *Events and damages covered by contract.* An account shall be adjusted when there is either liability for liquidated damages under § 514.17(d)(7)(vii), or the occurrence of an event described in § 514.17(d)(7)(viii).

(ii) *Mutual termination or shipper failure to meet cargo minimum not covered by the contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper or shippers' association has failed to tender the minimum quantity required by the contract:

(A) Further or continued implementation of the service contract is prohibited; and

(B) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment.

(2) *Notice to contract party.* A proposed final accounting or rerating under this section shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the service contract, for:

(i) Liability for liquidated damages under § 514.17(d)(7)(vii);

(ii) The occurrence of an event under § 514.17(d)(7)(viii); or

(iii) Termination, breach or default not covered by the contract.

(3) *Notice to Commission.* Detailed notice of any termination, rerating, and/or account adjustments, as well as final settlement of an adjusted account, shall be given to the Commission under paragraph (g)(2) of this section.

(m) *Record keeping and audit*—(1) *Records retention for five years.* Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(2) [Paragraph (m)(2) is stayed until further notice.] *Where maintained.* (i) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (m)(3) of this section.

(ii) If service contract records are not made available to the Commission as provided in paragraph (m)(3) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (m)(2)(i) of this section.

(3) *Production for audit within 30 days of request.* Every common carrier or conference shall, upon written request of the FMC's Director, Bureau of Enforcement or any Area Representative, submit requested service contract records within 30 days from the date of the request.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 46322, Oct. 8, 1992; 58 FR 27, Jan. 4, 1993; 58 FR 5622, Jan. 22, 1993; 61 FR 5309, Feb. 12, 1996; 61 FR 51233, Oct. 1, 1996]

EFFECTIVE DATE NOTE: At 57 FR 36271, Aug. 12, 1992, the effectiveness of paragraph (m)(2) is stayed until further notice. The agency will publish a document in the FEDERAL REGISTER.

Subpart C—Form, Content and Use of Tariff Data

§ 514.8 Electronic filing.

(a) *Exemptions.* (1) All tariffs required to be filed by this part shall be filed in the proper electronic form and manner unless specifically exempted by the Commission.

(2) A petition for a temporary exemption from the electronic filing requirements of this part shall be filed with the Secretary of the Commission under § 502.69 of this chapter and § 514.21. Unless a complete exemption from filing tariff material is warranted, the petitioner obtaining the exemption will still be required to file tariffs in paper format during the period of the exemption.

(b) *User manual.* A user manual for electronic filing (and/or retrieval) may be purchased from BTCL for a fee set forth in § 514.21. The user manual contains the following:

(1) *ATFI Fundamentals Guide,* which provides the basic ATFI concepts and the general system background to understand the procedures for ATFI use.

(2) *ATFI System Handbook,* which describes system use characteristics, provides high-level introduction to users' interfaces, i.e., menus and screens, outlines the information contained in the guides, and is a quick reference source for experienced users.

(3) *ATFI Tariff Retrieval Guide,* which provides complete instructional detail on the retrieval procedures to access all components of a tariff using the ATFI central site system in interactive mode.

(4) *ATFI Tariff Filing Guide,* which provides complete instructional detail on the interactive filing procedures to create and maintain all components of a tariff using the ATFI central site system in interactive mode.

(5) *ATFI ''Batch Filing Guide''* (see paragraph (d)(3) of this section), which presents information to tariff filers who prepare new tariff submissions or modifications in an ''off-line'' or batch mode, and then submit the batch filings to the Commission either electronically (on-line batch) or by tape (tape or in-bulk batch). Contains the ATFI transaction sets for proper formatting of batch filings.

(c) *Filing; types of filing.* In all cases, interactive, on-line batch or bulk (tape) batch, the filing session is processed as soon as possible after submission/receipt of the filing session information. The ATFI system assigns the filing date, which is the date an electronically transmitted (interactive or on-line batch) filing session file transfer is initiated (successful file transfer assumed) or the tape (in-bulk batch) is delivered to a designated location and date-time stamped, in local time in the U.S. Eastern Time Zone. After the filing session is processed, a filing-results message is placed in the filers electronic mailbox on the central site system.

(1) *Interactive filing.* Interactive tariff filing uses a modem and VT-100-type terminal (or VT-100-type terminal emulation on a personal computer) for ATFI access to create tariff filings, verify previous filings, and perform sample freight calculations for verification of filed information, using ATFI system screens and pop-up windows. The modem must adhere to one of the following standards: Bell 212 (1200 baud); CCITT V.22 (2400 baud); or CCITT V.32 (9600 baud). The filing is submitted when the filer executes the command to ''File all Authorized Changes'' and ATFI's ''sent'' response indicates completion of that filing session submission.

(2) *On-line batch filing.* On-line batch filing is performed by transmission of prepared tariff material to the ATFI system over dial-up lines from the filer's own computer, using published ATFI transaction set formats and the KERMIT file transfer protocols. The conclusion of the file transfer sequence is a positive keyboard entry to initiate the transfer and a response that indicates completion of that submission. The modem requirements are the same as those in paragraph (c)(1) of this section. On-line batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and transmitting via KERMIT protocol. KERMIT is public domain software and is available from: KERMIT Distribution, Columbia University Center for Computing Activities, 612 West 115th Street, New York, NY 10025.

(3) *In-bulk (tape) batch filing.* Tape batch filing is accomplished by physical delivery of prepared tariff material on magnetic tape, in the published ATFI transaction set formats, to designated location(s) and accepted/time-stamped by an ATFI attendant, or date/time stamped and deposited for processing. The tape is processed after receipt at the ATFI Computer Center. In order that in-bulk (tape) tariff data can be deemed to be ''filed'' on a particular date, the tape(s) must be appropriately delivered (deposited) by 5:00 p.m. on that date, if a normal Commission work day; or if the date desired is a non-work day, by 5:00 p.m. on the previous Commission work day. See § 514.10(a)(2)(iii). In-bulk batch filing requires a computer and software capable

of producing tariff material according to the ATFI transaction sets, and recording this on 9-track 1600 bpi or 6250 bpi tape according to standards outlined in the ''Batch Filing Guide.'' See paragraph (d)(3) of this section.

(d) *General format requirements*—(1) *Database format.* The ATFI database is structured from tariff data elements and the tariff objects (see paragraph (h) of this section) formed by logical grouping of those elements. For example, a TLI is a tariff object which contains data elements for origin, destination, rate, basis, service, etc. The tariff objects are relational, with the ''master'' record being the organization record for a firm. One or more tariff records would be ''related'' to that organization record. All required and optional Tariff Rules, any number of commodity descriptions, desired location groups and inland rate tables are related to a specific tariff record. TLIs are related to a specific commodity description and assessorial-charge algorithms are related to specific Tariff Rules, commodity descriptions or TLIs. This relational structure allows interactive ATFI users to quickly locate specific tariff objects regardless of the filing organization, tariff type or trade. Although the data formats are very precise and the CRT displays standard, the traditional page format is no longer in use. See paragraph (l)(1) of this section.

(2) *Batch transmission.* Batch transmission of tariff materials to the ATFI computer, either on-line or in-bulk, is governed by the transaction sets contained in the ''Batch Filing Guide.'' Tariff filings not complying with the regulations in this part or the formats and valid codes contained in the ''Batch Filing Guide'' are subject to rejection.

(3) *''Batch Filing Guide.''* The ATFI ''Batch Filing Guide'' is published and updated in Pike and Fischer, ''Shipping Regulation,'' SR 329:501, and a copy of the Guide is available from BTCL. The ''Batch Filing Guide'' includes the following items:

(i) *Transaction sets.* The transaction set formats also include transaction set segments, data elements, and reference tables.

(ii) *Data Element Dictionary (''DED'') and Valid Reference Table Entries* for certain data elements (e.g., service codes, container type codes, currency codes, etc.), calculation statement definitions, and condition and calculation statement data fields. For interactive filing, valid reference table entries can be accessed on help screens.

(4) *Adding new transaction data.* Requests for major changes or additions to the transaction set data dictionary or reference tables shall be submitted in writing to BTCL, with sufficient detail and reasons for each proposed change. A contact person and telephone number also should be provided in case of questions.

(i) A proposed major change (other than a correction), such as to a transaction set, will require formal configuration management procedures and a minimum of thirty days' advance notice of the change in the FEDERAL REGISTER and the ATFI system news, available at system logon, and by other established Commission communications procedures.

(ii) Minor changes will be entered into the system and published as soon as possible. Such minor changes include additions to any of the following term and reference lists: Cities; States and provinces; Countries; Ports; Container sizes; Container types; Container temperatures; Hazard codes; Inland modes; Packaging types; Rate Bases; Service types; Stuffing mode; Stripping mode; and Currencies. See Appendixes A and B to the ATFI Batch Filing Guide.

(e) *Hardware and software requirements.* The basic equipment suite necessary to access ATFI is a VT-100-type terminal (including CRT) and a modem. A more sophisticated suite for ATFI access would be composed of a personal computer (PC) (including CRT), a VT-100 emulation software package, and a modem. For batch filers, the transmitted filing session must be formatted to comply with the transaction sets. The transmission may be via the use of KERMIT file transfer protocols after establishing a link for on-line batch filing with the ATFI central site computer (see paragraph (c)(2) of this section).

(f) *Password and User ID.* (1) System Identifications (''IDs'') for either filing or retrieval logon and initial password assignments are obtained by submitting the User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part, to BTCL. A separate User Registration Form is required for each individual that will access ATFI.

(2) Logon IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any logon ID that is shared with, loaned to or used by parties other than the registrant.

(3) Authority for organizational maintenance, filing or retrieval can be transferred by submitting an amended registration form requesting the assignment of a new logon ID and password (see § 514.(4)(d)). The original logon ID will be canceled when a replacement logon ID is issued.

(g) *Connecting to ATFI; procedures.* If ATFI user equipment (hardware and software) is compatible with the configurations specified in paragraph (e) of this section, and the proper ID and password have been obtained under paragraph (f) of this section, on-line ATFI services (interactive retrieval, interactive filing, and on-line batch filing) are available to users registered under this section and § 514.21 for the respective services, over commercial telecommunications using standard asynchronous modems with data rates up to 9600 baud. The dial-up procedures are set forth in section 2.3 of the Batch Filing Guide and section 4.2 of the ATFI System Handbook, and the ATFI Hot Line number is available through BTCL.

(h) *Major menu selections.* Proper connection will lead the user to the ''ATFI Logo Menu,'' which allows selections by any user for ''Tariff Retrieval,'' ''Retrieval Practice,'' ''Retrieval CBI,'' ''Mailbox,'' ''ATFI System News,'' ''Change Password,'' ''Screen Setup,'' and ''Logout.'' Additionally, a registered filer can access ''Tariff Filing,'' ''Filing CBI,'' and ''Filing Practice.'' Upon the selection of either ''Tariff Filing'' or ''Tariff Retrieval,'' the user will be led to the ''Main Menu,'' which allows selection (with help screens and windows) of the following items and subitems (see also the anti-rebate policy notice in paragraph (j) of this section). The tariff *objects* (in addition to * ''Commodity Descriptions'' and * ''TLIs'') are marked with an asterisk (*).

(1) *Select Tariff.* This selection allows access to a particular tariff which can be selected by ''Organization Number,'' ''Origin'' and ''Destination,'' and/or ''Organization Trade Name.''

(2) *Rate Inquiry.* This selection is used for ''Commodities'' (§ 514.13(a)), ''TLIs'' (§ 514.13(b)), ''Access Dates'' (§ 514.10(a)(1)), and ''Algorithms'' for assessorial charges and calculations (§ 514.10(d)). For essential terms publications, ''Rate Inquiry'' provides access to the * ''Essential Terms'' of service contracts (§ 514.17).

(3) *Other Tariff Components.* This selection provides another menu for:

(i) * *Rules (Tariff Rules).* See § 514.15.

(ii) *Inland Rates.* (This provides access to * ''Inland Rate Tables.'') See § 514.15(b)(1).

(iii) *Commodity Index.* (This can also be accessed from the ''Commodity Search'' screen under ''Rate Inquiry.'') See § 514.13(a)(7).

(iv) * *Location Groups.* See § 514.10(b).

(v) *Tariff Definition.* This selection provides another menu for:

(A) * *Tariff Record.* See § 514.11(b).

(B) *Origin Scope.* See § 514.11(c).

(C) *Destination Scope.* See § 514.11(c).

(D) *Governing Tariffs.* See § 514.12.

(E) * *Organization Record.* (This item is more directly available by filers who have the authority to edit the ''Organization Record.'') See § 514.11(a).

(vi) *Select Tariff.*

(vii) *New Access Date.* See § 514.10(a)(1).

(4) *Utilities.*

(i) *Currency Conversion.*

(ii) *Display Options.*

(iii) *Version Information.*

(iv) *New Tariff Creation* (filers only).

(v) *General Rate Increases* (filers only).

(vi) *Authorize/Review Changes* (filers only).

(vii) *Filing Utilities* (filers only).

(5) *Exit Tariff System.*

(6) *V1.00 Information.*

(i) [Reserved]

(j) *Anti-rebate tariff notice.* To further implement the United States policy against untariffed rebates, as reflected in § 514.1(c)(1)(iii), the following notice will appear after logon to the ATFI system:

The foreign commerce carriers whose tariffs are recorded within this system have a policy against the payment of any rebate, directly or indirectly by the company or by any officer, employee or agent, which payment would be unlawful under the Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984. The shipping statutes also prohibit rebates in the domestic offshore trade.

(k) *Publication; paper copies of tariff materials—(1) Publication—(i) Availability for public inspection.* (A) During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public in paper or electronic form and at a reasonable charge (such as for a regular subscription under § 514.15(b)(30)) all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc.

(B) In addition to the requirements of paragraph (k)(1)(i)(A) of this section, every domestic offshore carrier shall make available to the public at each facility at which it receives freight or passengers for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.

(ii) *Availability of domestic offshore tariff materials to government officials.* The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish to a designated government official or office tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Such request may be for the tariff matter either to be made available in electronic format, or to be furnished in no more than two (2) paper copies. Upon receipt of such a request, which shall include the name, address and facsimile transmission number(s) of the designated official or office, the carrier shall promptly provide to the designated official or office the requested tariff material and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and offices shall be treated in the same fashion as paid subscribers in all other respects. See § 514.15(b)(30). In addition, a copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to § 514.9(b)(24)(ii), shall be provided to the designated Government officials or offices, on the same day that such tariff matter is filed with the Federal Maritime Commission, by hand delivery or facsimile transmission of one paper copy, or by electronic transmission, if available.

(iii) *Assistance to the public.* Persons requesting to inspect tariff materials shall, upon reasonable notice, be provided sufficient instruction or assistance to allow them to ascertain both the present and proposed rates, charges, classifications, Tariff Rules and practices of the tariff owner.

(iv) *Tariff Rule containing public access details.* Tariff filers shall set forth in detail in Tariff Rule 30 (§ 514.15(b)(30)) all costs, conditions and arrangements for public inspection of tariff material, including the official tariff when it is not available for access in the ATFI system due to a breakdown or similar disaster.

(v) *Official copies.* (A) Except as provided in paragraph (k)(1)(v)(B) of this section, the official version of a tariff will be the version of any and all tariff objects published and effective on a specific date in the ATFI central site computer or the ATFI archives. Individual tariffs are accessible by registered ATFI interactive retrievers and by the public at terminals in the Commission's Tariff Control Center.

(B) During a major emergency where the ATFI host processor is inaccessible due to an equipment breakdown in the ATFI system, the official tariff of a tariff owner shall be that maintained by the tariff owner for public access during just such an emergency. The access to the emergency tariff shall be described in the tariff owner's Tariff

Rule 30 (§ 514.15(b)(30)). As soon as the ATFI host processor becomes accessible, the tariff owner shall ensure that there are no discrepancies between the emergency tariff and the ATFI tariff.

(2) *Certified paper copies of tariff material.* The Commission will publish paper pages containing filed tariff information only for special Commission requirements, e.g., for requested certification of tariff data by the Commission Secretary for official use in court and in other governmental proceedings under § 503.43(c) of this chapter and § 514.21(d). The pages produced for these purposes will not reflect the formats of traditional, page-based tariffs, but will present tariff objects in effect or filed to become effective on a specific date. The paper format may reflect the printing of a computer screen display or the retrieval and printing of a specific portion of a tariff in the ATFI database or the ATFI database archives.

(l) *Certification of batch filing capability.* (1) The Commission will not make available to the public software packages for firms to use in formulating tariff filings. The Commission has released the ''Batch Filing Guide'' (with transaction sets) into the public domain so that qualified commercial firms can develop batch filing software for the general market.

(2) Certification. Firms which develop batch filing software, by appointment through BTCL and payment of the fee set forth in § 514.21, can be certified for the formatting of one or more of several types of tariff data (e.g., domestic, foreign, essential terms, etc.) in ATFI transaction set format and submission of that data to the FMC ATFI central site computer. The data may be submitted either via on-line batch transmission over dial-up telecommunications links using the required file transfer protocols, or in bulk batch via delivery to the ATFI computer center of magnetic tape containing the tariff data. Certification will require submission of tariff filing sessions to ATFI, with an evaluation of the actual results of the attempted filings to ensure that the transaction set formats are properly employed and that the filing results are consistent with the filer's expectations.

(m) *ATFI screens.* The sample screens used to illustrate tariff objects in this part simulate parts of, but are not the actual, completed ATFI screens used in the electronic filing and retrieval of tariff data, which may also change with technical or regulatory developments. Moreover, certain fields appearing on the actual ATFI screens may be blocked off from directly entering all or certain data in such fields, because of default procedures, developing and copying data from other, preliminary screens, etc. Accordingly, filers must carefully follow instructions in order to properly enter complete and accurate tariff data.

(n) *Validation of data.* Tariff data submitted to ATFI for filing are screened for compliance with ATFI conformity checks, and certain data not automatically rejected by the conformity checks are flagged for Commission examiner review.

(1) *Conformity checks.* The conformity checks are syntax checks, validity checks and associative checks. For interactive filing, the ATFI system will generally not accept tariff material which fails conformity checks and the on-line filer can immediately correct its proposed filing before final submission to the ATFI database. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of tariff materials must undergo the routine system conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with follow-up letter, if necessary. The conformity checks are:

(i) *Syntax Checks.* Tariff material will be checked for file integrity, proper data types, field lengths, and logical sequence according to the ''Batch Filing Guide's'' transaction sets. Data not conforming to the data element format or type in the ''Batch Filing Guide's'' Data Element Dictionary (''DED'') and the sequence requirements of the transaction sets and segment definitions will result in rejections of submitted tariff data to include the possible rejection of an entire filing if form and format errors are extensive enough to preclude processing.

(ii) *Validity Checks.* Certain data elements of filed tariff material will also be checked for data validity by type against the DED's published reference tables, such as for container types and sizes, rate basis, and packaging. See § 514.13(b).

(iii) *Associative Checks.* ATFI uses associative checks to identify logical conformity with established tariff filing rules. The following are some representative types of associative checks performed by the ATFI system.

(A) Any *new or amended tariff matter* must have:

(*1*) A valid organization number and name (§ 514.11 (b)(1)(ii) and (b)(2)).

(*2*) No suspended carrier or object status (See §§ 514.1(c)(1) and 514.19).

(*3*) Appropriate publication authority (§ 514.11(a)(9)(iii)).

(*4*) Filing date same as or prior to effective date (§ 514.10(a)).

(*5*) Valid and appropriate filing/amendment codes (§ 514.9).

(*6*) Valid and appropriate filing, effective, thru and expiration dates (§§ 514.9 and 514.10(a)).

(*7*) When used, valid special case number and filing/amendment code ''*S,*'' with no other filing/amendment codes entered (§ 514.9(b)(19)).

(B) *Tariff records* (§ 514.11(b)) must have new (unique to carrier/conference/terminal) tariff number (§ 514.11(b)(1)(ii)).

(C) *Commodity description records* (§ 514.13(a)) must have:

(*1*) Complete textual description and unique number.

(*2*) At least one commodity index entry.

(D) *Tariff line item (TLI)* records (§ 514.13(b)) must have a valid:

(*1*) Commodity description and code (§ 514.13(b)(5)).

(*2*) TLI code (§ 514.13(b)(6)).

(*3*) Origin and destination (§ 514.13(b)(15)).

(*4*) Rate basis (§ 514.13(b)(17)).

(*5*) A specified rate (§ 514.13(b)(19)).

(E) Tariff Rules (§ 514.15(b)) must have:

(*1*) All mandatory rules.

(*2*) Number of new Tariff Rule not previously used in that tariff.

(F) *New or enlarged scope* (certain tariffs) must have effective date 30 days or more after filing date (§ 514.11(b)(10)).

(G) *Essential terms* (§ 514.17) must have:

(*1*) All mandatory terms (§ 514.17(d)).

(*2*) Availability date for initial service contracts and each amendment thereto at least 30 days greater than the filing date (§ 514.17(d)(3)).

(2) *Flag for FMC examiner review.* In ATFI, electronic conformity checks cannot be designed to check and pass/fail every possible rejection situation, such as, for example, conflicting texts or ambiguous language. Other matters, such as filings of controlled carriers, require policy review under the 1984 Act. For these reasons, ATFI will automatically queue for review by a Commission examiner the items which survive the conformity checks described in paragraph (n)(1) of this section. The following are representative types of items flagged for examiner review:

(i) *Any new or amended tariff matter:*

(A) Of a controlled common carrier.

(B) With a filing/amendment code of ''*G,*'' ''*K,*'' ''*M,*'' ''*P,*'' ''*T,*'' or ''*X*'' (§ 514.9(b)).

(C) When a special case number is present (§ 514.9(b)(19)).

(ii) All *tariff record* filings and amendments (§ 514.11(b)).

(iii) All new *commodity descriptions* (§ 514.13(a)).

(iv) *Tariff line item (TLI) records* (§ 514.13(b)):

(A) With any increase and the filing/amendment code does not contain an ''*A*'' or ''*G*'' (§ 514.9 (b)(1) and (b)(7)).

(B) With any non-rate data changes (§ 514.13(b)(17)).

(v) *All Tariff Rules* (§ 514.15).

(vi) *Location groups* (§§ 514.9(b)(16) and 514.10(b)):

(A) Any new group or addition to group.

(B) Any deletion of a group member.

(vii) *All service contract essential terms filings.* (§ 514.17).

(3) *Status/rejection codes.* The command line at the bottom of most ATFI screens provides a ''Status'' option for retrievers to determine whether an ATFI object is accepted, rejected, suspended, etc., and the reasons therefor. The DED ''FMC Status/Rejection Code'' provides numeric, two-digit

codes for this purposes, e.g., ''01—Not rejected; item accepted.''

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§514.9 Filing/Amendment codes and required notice periods.

(a) *General.* (1) Under the shipping statutes, various types of tariff material require different notice periods (beginning with the filing date) before they may become effective. For example, a new tariff or a rate increase usually requires 30 days' notice before the effective date. See §514.4(a). Paragraph (b) of this section describes the different notice periods for the various types of filed tariff items and their corresponding filing/amendment codes (symbols), which shall be carefully used by the filer for the purposes of guiding the user and triggering accurate associative checks to ensure the integrity of the filed tariff material. See §514.8(n). The ATFI system makes available a *Help* screen which also lists the uniform symbols.

(2) *Multiple symbols.* Filed tariff material frequently can be coded with more than one symbol. Accordingly, the field, ''Amendment Type,'' appearing on most ATFI screens, will usually allow up to three different, compatible symbols, but see paragraph (b)(19) of this section.

(3) *Symbol(s) resulting from deletion.* When amendments deleting existing tariff matter alter the amount paid by the shipper/consignee, the effect of this change shall be indicated by the proper code symbol(s), as required by paragraph (b) of this section.

(4) *Restricted use of symbols.* The codes or symbols prescribed in paragraph (b) of this section may not be used for any other purpose, nor shall any symbol be used other than the appropriate symbol(s) described in paragraph (b) of this section.

(5) *Essential terms and terminal tariffs.* Due to the absence of most of the notice requirements otherwise applicable to carrier or conference tariffs, the use of symbols under this section for terminal tariffs will be appropriate for the tariff objects employed and filing/maintenance. Symbols for essential terms of service contracts under §514.17 will usually be ''I'' for initial filings, ''S'' for corrections, and the appropriate symbols for amendments to essential terms. See §514.17(d)(5)(i).

(b) *Filing/Amendment codes and notice periods.* For tariffs in foreign and domestic offshore commerce, the following are the notice periods for various types of filings and their corresponding symbols. To the extent applicable and permitted by the ATFI system, the symbols can also be used in other types of tariff material, such as terminal tariffs.

(1) *''A'' Increase (Foreign commerce and across-the-board increase which is not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section [''G'']: 30 days' notice.* (i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, charges, rules, or other tariff provisions (including fares in domestic offshore commerce), which constitute a cost increase in foreign commerce or an across-the-board increase in domestic offshore commerce, shall use the symbol ''A'' and be filed to become effective not earlier than 30 days' after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission. See paragraph (b)(24)(ii) of this section for domestic offshore increases which may be filed on seven workdays' notice.

(B) With the filing of tariff material under this paragraph (b)(1)(i), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher ''cargo n.o.s.'' or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

(2) [Reserved]

(3) *''C'' Change resulting in neither increase nor decrease in rates or charges: effective upon ''short notice,'' i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce.* (i)

Amendments which result in no change in cost to the shipper, such as an amendment changing only the name or address of the filing party, may become effective upon short notice (i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce) and shall use the symbol ''C;'' except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(ii) An amendment containing a rate on a specific commodity not previously named in a tariff which results in no change in cost to the shipper may become effective on short notice under this subparagraph, if:

(A) The tariff contains a ''cargo, n.o.s.'' or similar general cargo rate which would otherwise be applicable to the specific commodity;

(B) The specific commodity rate is equal to the previously applicable general cargo rate; and

(C) The common carrier is not a controlled common carrier which has not received special permission or an exemption authorizing the amendment.

(4) [Reserved]

(5) *''E'' Expiration: effective upon filing unless it results in an increase under paragraph (b)(1) ''A'' or (b)(7) ''G'' of this section.* When amendments deleting or expiring existing tariff matter alter the amount to be paid by the shipper/consignee, the effect of this change shall be indicated by other symbol(s) under this paragraph (b). Otherwise, expired or deleted matter, such as an amendment completely canceling a tariff due to a cessation of all service by the carrier between the ports or points listed in the canceled tariff, may take effect upon filing and shall use the symbol ''E.''

(6) [Reserved]

(7) *''G'' General rate increase or decrease (domestic offshore commerce): 60 days' notice.* Amendments of domestic offshore tariffs which change rates, fares, charges, Tariff Rules, or other tariff provisions and which constitute a general increase or decrease in rates, shall be filed together with any supporting material required by part 552 and § 502.67 of this chapter at least 60 days prior to their effective date and shall use the symbol ''G.''

(8) [Reserved]

(9) *''I'' New or initial matter: 30 days' notice*—(i)(A) New tariffs and, except for a general increase or decrease in domestic offshore commerce, filings which provide for new or initial rates, fares, charges, Tariff Rules or other tariff provisions resulting in an increased cost to the shipper, shall use the symbol ''I'' and be filed to become effective not earlier than 30 days after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

(B)With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) Initial filings of essential terms of service contracts under § 514.17 of this part may not use any symbol other than ''I.'' See paragraph (b)(19)(iii)(A) of this section for corrections to essential terms.

(10) [Reserved]

(11) *''K'' Rate or charge filed by a controlled common carrier member of a conference under independent action (foreign commerce): effective upon filing if decrease.*

(i) All changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part. Such changes shall use the most appropriate symbol(s) under this section.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, using the symbol ''K,'' subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the

conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(12) [Reserved]

(13) *''M'' Transportation of U.S. Department of Defense Cargo.* Where a rate for military cargo is incorporated as a separate TLI in the commercial tariff of a carrier or conference in foreign commerce, the filing/amendment code ''M'' shall be used to identify the TLI. Any such military rate may be effective upon filing.

(14)–(15) [Reserved]

(16) *''P'' Extension of service to additional port(s) at rates already in effect for similar services at the port(s) being added; or the carrier's establishment of additional terminal facilities at the port(s) already served, at the same rates as those currently applicable to comparable facilities of the carrier at the same port.*

(i) *In domestic offshore commerce:*

(A) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect upon filing and shall use the symbol ''P;'' and

(B) Carriers may file to be effective upon filing, using the symbol ''P,'' amendments establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor.

(ii) *In foreign commerce:*

(A) Amendments which provide for the addition of a port or point to a previously existing origin or destination field may become effective upon filing and shall use the symbol ''P.''

(B) A deletion of a port or point from a previously existing origin or destination field may not be coded with a ''P,'' but shall be coded with other appropriate symbol(s) under this section.

(17) [Reserved]

(18) *''R'' Reduction (Not a general rate decrease in domestic offshore commerce under paragraph (b)(7) ''G'' of this section)*—(i) *Domestic offshore commerce (one day's notice).* Except for a general rate decrease, amendments to domestic offshore tariffs which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in a decrease in cost, shall be filed to become effective not earlier than one day after the date of filing, using the symbol ''R,'' unless an exemption or special permission to become effective on less than said one day's notice has been granted by the Commission.

(ii) *Foreign commerce.* Amendments which provide for changes in rates, charges, Tariff Rules, regulations or other tariff provisions resulting in a decrease in cost to the shipper may become effective upon filing and shall use the symbol ''R;'' except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(19) *''S'' Special case matter: effective upon filing unless otherwise directed by the Commission.* Special case numbers will be developed and issued by the Commission and shall be entered by the filer, along with the symbol ''S.'' Special case matter may not be filed with other types of amendments, including special case matter with other special case number(s). When filing special case matter, no filing/amendments codes other than ''S'' may be used. Special Case filings may arise from the following situations:

(i) Special permission under § 514.18.

(ii) Special Docket decision under § 502.92 of this chapter.

(iii) Correction or resubmission of essential terms.

(A) Correction under §§ 514.7(k) and 514.17.

(B) Resubmission after notice of intent to reject under § 514.7(j).

(iv) Filing to put tariff in order after rejection or overturning a rejection. (Except with the use of the *Thru-date* under § 514.10(a)(5), the ATFI system cannot by itself restore material that has been superseded or rejected, so the filer is required to make any filings to put its tariff in order, through the special case procedures, if necessary.)

(v) Filing of tariff data after suspension under § 514.19.

(vi) Other situations, as directed by the Commission.

(20) *''T'' Terminal rates, charges or provisions or canal tolls over which the carrier has no control: effective upon filing.* Wherever a tariff includes charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carrier or conference which merely acts as a collection agent for the charges, and the agency making such changes does so without notice to the tariff owner, such provisions may be changed in the carrier's or conference's tariff upon filing and shall use the symbol ''T.''

(21)–(22) [Reserved]

(23) *''W'' for same-day withdrawal of erroneous data.* A filer may withdraw an erroneous filing by the use of the symbol ''W'' with the corrected filing, but only if the corrected filing is made on the same date as the erroneous filing.

(24) *''X'' Exemptions.* (i) Controlled carrier data in U.S. bilateral trades or in trades served exclusively by controlled carriers. (See § 514.3(a)(2).) A controlled common carrier shall use the symbol ''X'' for all tariff material filed under the following exempt situations:

(A) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(B) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

(C) The controlled common carrier operates in a trade served exclusively by controlled common carriers.

(ii) *Domestic offshore tariff increases not general or across-the-board increases (7 workdays' notice).* (A) Except for an across-the-board increase (''A'') or a general rate increase (''G'') in domestic offshore commerce, an amendment which provides for changes in rates, fares, charges, rules, or other tariff provisions, which constitutes a cost increase in domestic offshore commerce, shall use the symbol ''X'' and be filed to become effective not earlier than 7 workdays' after the date of filing, unless an exemption or special permission to become effective on less than said 7 workdays' notice has been granted by the Commission. See paragraphs (b)(1) and (b)(7) of this section.

(B) With the filing of tariff material under this paragraph (b)(24)(ii), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(C) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher ''cargo n.o.s.'' or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

(iii) The symbol ''X'' may be used for other situations involving an exemption or continuing special permission, as directed by the Commission.

(c) *Multiple amendments; same or different TLI.* All filings with adequate notice, but with *different, successive* effective dates (each filing effective after the effective date of the previous filing), will be entered into the ATFI system, whether or not they amend the same TLI. On the other hand, unless an appropriate thru date (§ 514.10(a)(5)) is employed to protect the *same or later* effective date of an *earlier* amendment of the same TLI, only the *later (or last)* filing, which has an effective date the *same as or earlier* than that of the previous filing(s), will be given effect, in which case, the previous filing(s) will be presumed to be erroneous and void.

(d) *Supplements.* ''Supplements'' to tariffs are prohibited. The ATFI system will electronically accommodate the necessary amendment of each TLI selected for general rate changes, through the GRI/GRD utility, assessorials and/or individual TLI changes. Other matters, previously handled by supplements in traditional,

page-based tariffs, will be handled procedurally and/or through Tariff Rules, TLI notes, etc.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 58 FR 28, Jan. 4, 1993; 58 FR 28790, May 17, 1993]

§ 514.10 Other items used throughout ATFI.

(a) *Control dates and history.* Various control dates are used for tariff material filed in and/or retrieved from the ATFI system. The following simulated screen illustrates these dates which are found on many ATFI screens and contains corresponding numbers keyed to explanatory and regulatory subparagraphs within this paragraph (in addition to ''Today'' which is the date of entry into the system and the screen). For special date provisions applicable to the essential terms of service contracts, see §§ 514.17 (d)(3) to (d)(5).

```
[§ 514.10(a)]       Today: 01Jan1992
    [Always Today's Date]

[(2)]         Filing date: 01Jan1992
[(3)]      Effective date: 31Jan1992
     [e.g., 30 days' notice]
[(5)]                thru: 01Mar1992
[(4)]     Expiration date: 01May1992
  [or TLI expires (etc).]
---------------------------------
[(1)(i)]--   Access date: 01Jan1992
  [Today's date unless changed]
   [Could be changed to e.g.
    01Dec1991 or 01June1992]
[(1)(ii)   History   -Rev   +Rev
```

(1)(i) *Access date and history.* The default date for the Access date is ''Today's date.'' Interactive ATFI, however, allows the user to set a different, desired access date for retrieving objects within the tariff. See § 514.8(h)(3)(vii). The system will select only tariff items that are in effect on the chosen access date. This allows the user to examine the tariff as it existed on a particular date in the past, or to examine rates and Tariff Rules which have a future effective date.

(ii) *History; −Rev; +Rev.* Similar to the functionality of the Access date, the following functions are also available on many ATFI screens:

(A) *History.* This function displays the entire list of modifications to a tariff item.

(B) *−Rev.* This function displays the previous revision (one revision at a time) of the tariff item just prior to the date displayed in the effective date field. See paragraph (a)(3) of this section.

(C) *+Rev.* This function displays the next (future) revision of the tariff item according to the date in the effective date field. See paragraph (a)(3) of this section.

(2) *Filing date.* The filing date, or the date any tariff or tariff element is processed by ATFI, is used to determine the beginning of the advance notice period required for various types of tariff material under § 514.9(b). The filing date is determined for each of the three basic types of filing, as follows:

(i) *Interactive.* The interactive filing system enters a filing date (current date) for every tariff object or tariff object update to be filed. Proposed objects with an outdated filing date will not be accepted by interactive ATFI. The day of filing is determined by the time of the ''Commit Authorized Filings to ATFI'' command at the completion of an interactive filing session and the ''Sent'' response from the system, indicating completion of that command at the ATFI central site, in local time in the U.S. Eastern Time Zone. The function ''FileDate'' (or ''DefaultDates'' or ''Defaults'') enables the user to update its proposed filing date to match the date of expected transmission of the proposed filing.

(ii) *On-line batch.* Filers will have a filing date automatically assigned to all tariff objects filed according to the start time of the file transfer, for file transfers that are successfully completed, U.S. Eastern Time Zone. On-line batch filers should plan the transmission of filing session files to allow for retransmission(s) starting during the same U.S. Eastern Time Zone date, in case the results of the initial transmission(s) are not successful.

(iii) *In-bulk (tape) batch.* Filers will have a filing date (in local time in the U.S. Eastern Time Zone) assigned to all tariff objects filed according to the date of delivery of a tape to a designated location. If the date of delivery

is a normal Commission work day, the filing date can be that date if the tape is delivered by 5:00 p.m. If the delivery date is not a normal Commission work day, or the tape is delivered after 5:00 p.m. on a normal work day, the filing date may not be until the next Commission work day.

(3) *Effective date.* The Effective date is the date upon which a filed tariff or tariff element is scheduled to go into effect by the filer. It determines the end of the advance notice period required for various types of tariff material under § 514.9(b). Specifically, a tariff provision becomes effective at 12:01 a.m. on the beginning of the effective date. In interactive filing, the Effective date can be changed through ''FileDate,'' etc., as described in paragraph (a)(2)(i) of this section.

(4) *Expiration date.* The Expiration date is the last day, after which the entire tariff or tariff element (e.g., TLI), which is designated to expire, is no longer in effect. After midnight at the end of this day, the current version of the tariff will not include the expired object. In the screen example, the entire item (e.g., TLI) expires on May 1, 1992, leaving no specific rate, which could result in an increase to an NOS rate, for which advance notice from the filing date is required under § 514.9(b). The expired object becomes a part of the history objects for the tariff.

(5) *''Thru'' date.* The thru date is the date after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. After midnight at the end of the Thru date, the previously effective tariff object will resume its effect. Thru-date tariff objects recognize and maintain the validity of the unexpired tariff objects they temporarily supersede during their time of effectiveness. In the screen example, the effective item reverts to the item prior to effectiveness on March 1, 1992, which goes out of existence when expired on May 1, 1992. Where an increase requires an advance notice (e.g., 30 days) under § 514.9(b), a Thru-date item which is:

(i) A decrease when initially effective requires 30 days' notice from the Filing date to the Thru date, irrespective of when it becomes effective (no earlier than Filing).

(ii) An increase when initially effective requires 30 days' notice from the Filing Date to the Effective date, but may revert (Thru date) to the previous item on or after the Effective date.

(b) *Locations and groups.* The names of places entered by filers, such as in origin and destination scopes and TLIs, shall conform in spelling to, and will be validated by, ATFI glossaries.

(1) *Names*—(i) *Point names.* ATFI recognizes approximately 250,000 world place names.

(ii) *Port names.* ATFI recognizes ocean port names, using spellings concordant with the Point Names list, where there is a corresponding point name.

(2) *Location groups.* In the primary tariff, or in a governing tariff under § 514.12(a)(1)(ii), the filer will have the option to define and create groups of cities, states, provinces and countries (e.g. location groups) or groups of ports (e.g. port groups), which may be used in the construction of TLIs and other tariff objects in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names. A partial screen illustrating the locations within an origin port group follows:

```
[§ 514.10(b)(2)]
        ATFI LOCATION GROUPS

          Group:  US ATL. PORTS
    Port Group:  Y
 Origin or Dest:  O

        Origin Ports

 BALTIMORE (port), MD, USA
 BOSTON (port), MA, USA
 JACKSONVILLE (port), FL, USA
 MIAMI (port), FL, USA
 NEW YORK (port), NY, USA
```

(c) *Currency.* ATFI recognizes a large number of foreign currencies for rates and charges. The complete list of ATFI-recognized currencies is available on-line. Currency conversion rates are maintained and updated in ATFI on

a periodic basis; except that these conversion rates are for comparison purposes only, not as official conversion rates for booking or billing. See § 514.8(h)(3)(vi).

(d) *Assessorials and algorithms*—(1) *Requirement.*—(i) *Charges.* Assessorial or accessorial charges, which are to be added to the basic ocean freight rate to calculate the total cost to the shipper, shall be clearly shown through mathematical formulas or algorithms, as further explained in the Batch Filing Guide (as well as in the rest of the User Manual), when the applicability of the additional charge to the basic ocean freight rate can be accurately determined prior to the carrier's receipt of cargo. Examples of the types of assessorial charges that would usually not be determinable prior to cargo shipment or preparation of the Bill of Lading are:

(A) Free Time and Demurrage under e.g., a rule for detention or demurrage on carrier equipment.

(B) Diversion of cargo.

(C) Blocking, bracing, staking, securing or protective-covering charges that cannot be predetermined.

(D) Cargo held by carrier or terminal storage.

(ii) *Precedence* There should be no conflict between the algorithm and the textual description of the assessorial (if any), but, if there is, the algorithm shall take precedence.

(iii) *Predeterminable charges.* Assessorial charges which can be determined prior to shipment shall be expressed in algorithm form and may be contained in Tariff Rules of tariffs under § 514.15, as well as in commodity descriptions and TLIs of tariffs under § 514.13. Algorithms, including dummy algorithms under paragraph (d)(1)(iv) of this section, are not accommodated in essential terms publications or statements of essential terms under § 514.17.

(iv) *Non-predeterminable charges; null linkage.* Assessorial charges, which cannot be determined prior to shipment and which are not expressed in the normal algorithm form, shall be set forth in full-text format in the same locations as described in paragraph (d)(1)(iii) of this section. In order to apprise the retriever that such charges may be applicable, however, the filer shall link all of these charges to the appropriate item(s) using null linkage (dummy algorithms), i.e., the algorithm: WHEN—ALWAYS; THEN—NOTHING.

(2) *Overview.* Algorithms are expressed as one or more condition and calculation statement sets. Each set reflects a separate possible condition which may apply, and the means of calculating a tariff additional charge for that condition. A set is composed of a group of condition statements, followed by a group of calculation statements. The allowable condition statements accommodate historically common criteria for the assessment of ocean freight and charges (e.g., ''When Destination is 'New York','' ''When Container Size is '40Ft','' etc.). These statements, in turn, accommodate historically common factors used in the computation of freight and charges (e.g., weight, volume, origin, container size, etc.).

(3) *Calculation statements.* The calculation statements, listed in the Batch Filing Guide at Appendix B, section 2, include common arithmetic functions, including
addition [<X> = <A> + <B>],
subtraction [<X> = <A> − <B>],
multiplication [<X> = <A> X <B>] and
division [<X> = <A> / <B>], as well as other operations, such as
minimum [<X> = MIN (<A>, <B>)] and
maximum [<X> = MAX (<A>, <B>)]
functions.

(4) *Screen illustration.* A partial screen (with pop-up help window), illustrating algorithms with multiple condition sets for a commodity description, follows:

```
[§ 514.10(d)(4)]
    ATFI COMMODITY DESCRIPTION

 Number     Commodity Description
 Assessorial Charge Calculation
  DESC: House to House Surcharge

 CYCLE: 2 (Define RATING values-
           wt, vol, etc.)

   SET: (1 of 2)
  WHEN: SERVICE-TYPE is HH
   AND: RATE-BASIS is W
  THEN: RESULT =
        RATED-WEIGHT x 3.75USD

   SET: (2 of 2)
  WHEN: SERVICE-TYPE is HH
   AND: RATE-BASIS is M
  THEN: RESULT =
        RATED-VOLUME x 5.00USD
```

Between the two (condition) sets, there is an implied *''OR''* operator (weight *''OR''* measure). This means that either one or the other of these condition sets must be TRUE in order for the assessorial to apply. After entering the rated weight and volume in these condition sets, the system will process them in the order in which they appear, evaluating whether each is TRUE or FALSE. If TRUE, the assessorial is applicable to the shipment and will be entered onto the main screen where other potentially applicable assessorials (e.g., in different Tariff Rules) will also be processed.

(5) *Application.* For filing, a toggling (on or off) function provides specific application (''linking'') of an assessorial to a commodity or Tariff Rule. For retrieving, applicable assessorials are added to the applicable TLI to find the overall cost for the shipment. Before shipment, however, there will be some condition sets where the values are not known (e.g., a surcharge for a non-scheduled port where the ship calls in an emergency and unloads the shipment). In these cases, assessorials cannot be accurately applied prior to booking or sailing. Nonetheless, filers shall use the null linkage or dummy algorithm functionality to label and link assessorials in full text form to other ATFI objects, such as TLIs and commodities, for the purpose of enabling the retriever to identify all potentially applicable charges.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993]

§ 514.11 Organization and tariff records; tariff scope.

(a) *Organization record.* The organization record is the master record for all tariff information in ATFI for a specific firm. Each firm wishing to file tariffs or essential terms must complete and submit an ATFI User Registration Form (exhibit 1 to this part) under §§ 514.4(d) and 514.8(f). Upon Commission approval of organization registration in ATFI, a ''shell'' organization record, specific to the requestor, is established and contains the organization number, organization name and organization type. The firm's authorized representative can then access the newly established organization record (see partial screen), using the special access Logon ID and password for organizational record maintenance, to file the address for the firm's home office, and complete the affiliations, d/b/a, and publisher lists as appropriate. To maximize security of the data, maintenance (editing) of the organization record will be permitted only through the interactive mode by the individual in the firm holding the special access LOGON ID and password for organization record maintenance. The following simulated screen is indexed to subsequent, explanatory subparagraph (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

```
[§ 514.11(a)]              ATFI ORGANIZATION RECORD
                                  XYZ, Inc.

 [(1)]              Org Number: 999999       Agreement #:
 [(2)]                Org Name: XYZ, Inc.
 [(3)]  Country of home office: USA

 [(4)]            Org type: NVOCC - NON-VESSEL-OPERATING COMMON CARRIER
 [(5)]          Controlled: N
 [(6)]           SCAC Code: XYZZ

 [(7)]                Home Office Address Information

                  Street1: 201 Broadway
                  Street2: 72nd Floor
                     City: New York, NY, USA
              Postal Code: 10007

                  Contact: Julian Xavier or Rick Zarones

                    Phone: (212) 555-1236
                      Fax: (212) 555-5678
 [(8)] ------------------------------------------------------------

 [(9)]       Affiliations          dba's             Publishers
```

(1) *Org number and agreement number.* The organization and agreement numbers are generated by the Commission for the particular tariff owners. The agreement number is filled in only if the organization is an agreement (conference, etc.). The organization number is also used to verify whether a current anti-rebate certification has been filed under §514.1(c)(1)(iii).

(2) *Org name.* The organization name (filled in by the FMC) is the official name of the firm (from the corporate charter, etc.), often a parent corporation, responsible for filing tariffs, often by several affiliates through d/b/a names. The Org Name on the Org Record screen is not changeable by the filer.

(3) *The Country of home office* is the country in which the firm's headquarters is located.

(4) *Org type* would be ocean carrier, conference, NVOCC, etc.,

(5) *Controlled.* This field is filled in by the Commission and indicates whether the firm is a controlled carrier (''Y'' or ''N'').

(6) *SCAC Code.* The Standard Carrier Alpha Code (assigned by the Motor Freight Association) further identifies the registered organization.

(7) *Home office address information.* A second line for street address is provided, if necessary, and names of contact person(s) shall be entered. Otherwise, the field is self-explanatory.

(8) *Command line.* While not shown on most screen illustrations in this part, the items and functions in (below) the command line provide instructions for accessing help screens, tables and other information relevant to the screen. The data required in paragraph (a)(9) of this section are found on separate screens which are accessed by highlighting the item and pressing *''ENTER.''*

(9) (i) *Affiliations.* The affiliations are: members of a filing conference; participating carriers; or conferences to which a filing carrier belongs. As with the organization, itself, both the name and Commission-assigned number shall be listed.

(ii) *dba's.* The d/b/a (''doing business as'') names of affiliated firms are listed

here. Filers shall ensure that the d/b/a's of all firms filing tariffs under the organization umbrella are accurately listed.

(iii) *Publishers.* Filers shall list all publishers used to file and maintain the organization's tariffs. Publishers will be assigned Org Numbers by the FMC which will be entered here.

(b) *Tariff Record.* The tariff record(s) for a specific organization registered under paragraph (a) of this section show the characteristics of each tariff. The ATFI system provides an index of all organization's tariffs from the data furnished in the Tariff Record. The following simulated screen is indexed to subsequent, explanatory subparagraphs (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

```
[§ 514.11(b)]                ATFI TARIFF DEFINITION

 [(1)]        Org Number: 999999    Tariff #: 001    Tariff Code: XYZZ001
 [(2)]          Org Name: XYZ, Inc.
 [(3)]             d/b/a: XYZ Line
 [(4)]             Title: XYZ Line Worldwide Commodity Tariff
 [(5)]       Tariff type: FC
 [(6)]        Tariff TON:   1 KT  or  1.000 CBM
 [(7)]    Monetary Units: USD US Dollar (USD)

                            Address Information

 [(8)]  (1 of 3)    Publishing Office
                          Name: XYZ Line
                       Street1: 201 Broadway
                       Street2: 65th Floor
                          City: New York, NY, USA
                   Postal Code: 10007

                       Contact: Maria Yates
                         Phone: (212) 555-1237
                           Fax: (212) 555-5678
 [(9)] ------------------------------------------------------
 [(10)]          Origin              Destination
 [(8)]   Select Address
```

(1)(i) *Org number* is the same is in paragraph (a)(1) of this section. This number cannot be changed by the filer.

(ii) *Tariff #* is a 3-digit number assigned by the organization to distinguish it from its other tariffs.

(iii) *Tariff code* uniquely identifies a tariff within the ATFI system. It consists of either the organization number plus the user-assigned tariff number (e.g., 999999–001) or the SCAC code (see paragraph (a)(6) of this section) plus the user-assigned tariff number, as in the illustration. The SCAC code takes precedence when previously provided on the ATFI User Registration Form (Exhibit 1 to Part 514) for entering on the organization record during creation or amendment.

(2) *Org name* is the same as in paragraph (a)(2) of this section.

(3) The *d/b/a* name could be a name different from the organization name, but shall appear in the list of d/b/a's in the organization record under paragraph (a)(9)(ii) of this section.

(4) The *Title* of the tariff is assigned by the organization and could be as shown in the illustration.

(5) *Tariff Type* in the illustration is ''FC'' for ''foreign commodity tariff'' as set forth in the ''Batch Filing Guide's'' Data Element Dictionary.

(6) *Tariff TON* is the default (unless changed) measurement units throughout the tariff for both weight and volume, as codified in two tables of the ''Batch Filing Guide's'' Data Element Dictionary.

(7) *Monetary units* is the default (unless changed) currency unit to be used throughout the tariff. See § 514.10(c).

(8)(i) *Address information* is the same as in paragraph (a)(7) of this section, except that more than one address and contact person can be provided (see ''Select Address'' in Command Line), such as for the tariff publisher, the organization's tariff filing, billing and/or claims office, and an agent for service of process under paragraph (b)(8)(ii) of this section.

(ii) *Foreign-domiciled NVOCCs.* Every NVOCC not domiciled in the United States shall enter in the first address field provided in the tariff record the name and address of a person in the United States designated under § 514.15(b)(24)(ii) and § 583.5 of this chapter as its legal agent for service of judicial and administrative process, including subpenas.

(9) *Command line.* See paragraph (a)(8) of this section.

(10) *Scope: origin and destination.* The scope of each individual tariff is defined in more detail, in Tariff Rule 1 of the tariff (514.15(b)(1)), but entered in two specific location groups (see § 514.10(b)(5)(ii)) in the auxiliary screen for the tariff record. All other origin and destination ports and points filed in the tariff shall be within the geographic scope of the regions and/or countries defined in the tariff record scope.

(i) *Origin.* The origin scope is a single location group or port group in a tariff encompassing the allowable origins for TLIs defined in that tariff.

(ii) *Destination.* The destination scope is a single location group or a port group in a tariff encompassing the allowable destinations for TLIs defined in that tariff.

(iii) *Between tariffs.* The filer may insert a statement in the scope fields that the rates and charges, etc. are between two location groups, but shall create separate origin and destination pairs, as well as TLIs, for each direction.

(iv) *Ports and/or points.* A tariff with origin and destination groups containing only ports will be a port tariff only; no onward through intermodal rates will be allowed. A tariff with non-port cities, states, or country names in either the origin or destination group will be eligible to contain intermodal rates under § 514.15(b)(1).

§ 514.12 Governing and general reference tariffs.

Where any matter directly affects a TLI, it must be filed in electronic form in the appropriate tariff in the appropriate place. Thus, a governing tariff may be a commodity tariff, but only locations, inland rate tables and Tariff Rule level assessorials (and not commodity descriptions or TLIs) within such a governing tariff may be linked to govern matter in another (''governed'') tariff.

(a) *Governing tariffs (filed electronically).* A filer which files multiple tariffs with duplicative and/or commonly applicable items, such as Tariff Rules or inland rate tables, may file a governing tariff which contains, and is referred to in the governed tariff(s) as a source for, location groups, inland rates and rules-level assessorial charges, which are applied as if they were a part of the governed tariff.

(1) *Types.* Due to ATFI's ''linkage'' design feature, whereby tariff items at rules level (location groups, inland rate tables and algorithms in rules), can be electronically referenced and made applicable from one tariff (governing) to another (governed), a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format:

(i) *Rules tariffs*, including Hazardous Cargo Tariff Rules and/or other Tariff Rules which contain assessorial charges (see § 514.15(b));

(ii) *Location group tariffs* (see § 514.10(b)(2));

(iii) *Inland rate table tariffs* (see § 514.15(b)(1));

(iv) *Bill of lading tariffs* (see § 514.15(b)(8));

(2) *Creation and link to governed tariff.* Governing tariffs shall be created by using ATFI's standard tariff creation function and referenced in each governed tariff, using the ''Governing Tariff'' function under § 514.8(h)(3)(v)(D), where the list of governing tariffs may be accessed.

(3) *Conflicts between governing and governed tariffs.* A Tariff Rule affecting a TLI or passenger fare may appear in only one governing tariff. See § 514.4(b)(3)(iii). Filers shall ensure the exclusive and accurate application of tariff matter contained in governing and governed tariffs to every TLI contained in the governed tariff, as illustrated by the following:

(i) *Application of Tariff Rules and associated assessorial charges.* Tariff Rules, and any assessorial charges within the Tariff Rules, from both the governed tariff and the governing tariff, will automatically apply to any shipment, unless the Tariff Rules in either or both tariffs are ''turned off,'' using system-assessorial-charge-application flags to disable the charge application, which will indicate the ''Yes'' or ''No'' status to the users of the central site system. Unless ''turned off,'' duplicative, redundant, or overlapping assessorial charges could apply to shipments, because the ATFI central site applications will not deconflict like-type assessorial charges. Where the non-rate-affecting Tariff Rules' texts conflict between governing and governed tariffs, the governed Tariff Rules will prevail.

(ii) *Location groups.* Location groups from both governed and governing tariffs will apply to any shipment, unless both tariffs include a group with the same name. In this case, if not corrected or accommodated by the filer, the location group from the governed tariff will take precedence and the governing tariff location group of the same name will be ignored.

(b) *General reference tariffs (in paper format).* Certain tariffs, other than governing tariffs described in paragraph (a) of this section, are general reference tariffs and, if they do not contain assessorial charges or other matters affecting the TLI, will continue to be ''on-file'' at, or accepted by, BTCL, in paper format. General reference tariffs are usually compiled by firms (with FMC-assigned Org Numbers) other than those required to file ocean freight tariffs, and are allowed to be cross-referenced in the electronically-filed tariffs. General reference tariffs include:

(1) *Hazardous Cargo Rules Tariffs,* not containing rates or charges (see § 514.15(b)(16) and paragraph (a)(1)(i) of this section).

(2) *Equipment Registers.*

(3) *Equipment Interchange Tariffs.* (i) Equipment interchange tariffs may be filed in electronic format under this part, or, in paper format, arranged in the following order:

(A) Title Page.

(B) Check Sheet (optional).

(C) Table of Contents.

(D) Explanation of Symbols, Abbreviations and Reference Marks.

(E) Tariff Rules.

(F) Free Time and Charges—List of Exceptions to Standard Free Days and/or Charges.

(ii) The Tariff Rules section of the equipment interchange tariff shall include Tariff Rules 1 (Scope, § 514.15(b)(1)) and 21 (Use of Carrier Equipment, § 514.15(b)(21)). Other unused mandatory Tariff Rules in § 514.15(b) shall be noted as ''Not Applicable.'' Equipment interchange tariffs need not reference carrier or conference rate tariffs.

(4) *Mileage guide publications.*

(c) *Essential terms of service contracts.* To the extent possible under the special full-text format for electronic filing of the essential terms of service contracts under § 514.17, the following types of governing tariffs are permissible:

(1) Essential terms publications under § 514.17(b) (solely for essential terms documents); and

(2) Tariffs of general applicability under § 514.17(b)(2) (solely for essential terms publications).

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 58 FR 30715, May 27, 1993]

§514.13 Commodities and tariff line items ("TLIs").

In ATFI, commodities and rates (TLIs) are created separately for system reasons, but each TLI under paragraph (b) of this section shall be associated with, applicable to, and subsumed under, an already existing, specific commodity under paragraph (a) of this section. There may be many TLIs applicable to one commodity. A different four-digit code must be assigned for every TLI applicable to one particular commodity as a suffix to the one 10–digit commodity code, created by the tariff owner under paragraph (a) of this section.

(a) *Commodities*—(1) *Choice of methodology.* For each separate commodity in a tariff, a separate and distinct 10–digit numeric code shall be used. Within the system's transaction-set parameters, filers may use any commodity coding they wish but are urged to utilize the Harmonized System (''HS'') for both the commodity coding and associated terminology (definitions), to the maximum extent possible.

(2) *Commodity description*—(i) *General requirements.* (A) Commodity rates shall be specific and may not apply by implication, or otherwise, to analogous articles.

(B) Commodity descriptions shall include dimensions and weights for cargo rated on an ''Each'' (''EA'') basis, when the packaging is non-standard (e.g., machinery).

(C) Commodities subject to minimum quantity requirements for carriage or rating shall include a clear statement of such requirements in the commodity description and/or TLI to which they apply. See also Tariff Rule 11 (§514.15(b)(11)).

(ii) *Exclusions; special provisions.* In the commodity description record, filers shall list commodities excluded from the commodity description and provide notes to articulate any special provisions that may apply to the commodity description, e.g., where a commodity is subject to time/volume, open or independent-action rates, as described in paragraph (b)(19) of this section.

(iii) *Assessorial charges applicable to commodity.* Assessorial charges (see §514.10(d)) that are specific to a described commodity shall be applied to the commodity by creating the appropriate algorithm condition sets in the commodity description record.

(3) *Use of the HS code (Optional).*—(i)*The Harmonized System (''HS'').* In HS, the first two digits identify the chapter. The basic commodity chapters are numbered from ''1'' to ''97.'' Each chapter is divided into several commodity headings. The second two HS digits identify the heading. Each heading is divided into several commodity subheadings. The third two HS digits identify the subheading. Finally, four more digits (digits 6–10) can be used to further classify commodities within the HS chapter, heading and subheading.

(ii) *Classification and description under the optional HS code.* When using HS, commodities should be classified as specifically as possible under the HS, in a manner which conforms the product under substantive, rather than simply textual, criteria. Each commodity description should be consistent with the corresponding HS description for the particular code or parts of the code used. When using HS, for the first six digits (of the 10-digit ATFI commodity code), filers should not use other codes not found in the HS, but should use the modified HS and special ATFI codes described in this paragraph. The remaining system four digits are to be user supplied, but different commodities may not have the same 10-digit number.

(iii) *Six-digit code applicable to commodity.* If the commodity description established by the filer coincides with an HS description at the (first) six-digit classification level, the six-digit code should be used, e.g., ''9503.10—Electric trains.''

(iv) *Six-digit code inapplicable to commodity.* When the commodity description established by the filer does not fully coincide with any (first) six-digit description in the HS, as provided in paragraph (a)(3)(iii) of this section, and it would be inaccurate to describe it using a six-digit classification, only that part of the HS classification that is applicable to the filer's commodity description should be used, as follows:

(A) *Four digits.* If a commodity can be classified only by HS chapter and heading, then the filer should use the correct chapter and heading digits (digits 1–4), and the subheading digits (digits 5–6) should be filled in with ''00,'' e.g., ''9501.00—Wheeled toys, n.o.s.''

(B) *Two digits.* If a commodity can be classified only by the chapter (digits 1–2), then the heading and subheading digits (digits 3–6) should be ''00.00,'' e.g., ''9500.00—Toys, n.o.s.''

(4) *Mixed commodities and mixed lots.* (i) Except for project rates under paragraph (a)(5) of this section, mixed commodities (to the extent not accommodated by the ''00'' HS approach described in paragraph (a)(3)(iv)(B) of this section) will require the ATFI code ''99'' for the first two digits, whether or not HS is used, with the next four digits (#'s 3–6) available at filers' option, and will include situations involving:

(A) *One specific commodity description which includes several commodities classified in more than one HS chapter (or filer's equivalent),* e.g., ''Footwear'' or ''Footwear, n.o.s.'' (various types or parts of which are contained in HS chapters 44, 64, 83, 90 and 98); or

(B) *''Mixed commodities'' (semble),* as a commodity description, which includes several commodities, all of which must be specifically listed in the description for the mixed commodities, whether or not HS is used.

(ii) Whether or not HS is used, where specified proportions of certain mixed commodities or other conditions are required to comply with the description or to be eligible for a particular TLI associated with the description, the specific proportions and/or conditions shall be set forth specifically for the commodity, and/or in a Tariff Rule under § 514.15, as applicable.

(5) *Projects (for ''Project Rates'').* A ''Project'' commodity description for project rates (TLIs) includes materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also includes disaster relief projects. None of the materials or equipment covered shall be transported for the purpose of resale or other commercial distribution.

(i) Any ''Project'' will require the ATFI code: ''98'' for the first two digits, with the next four digits (#'s 3–6) available at filer's option, and the commodity description record shall include:

(A) An exact description of the project which demonstrates that it is qualified for a ''project rate'' under paragraph (a)(5), introductory paragraph, of this section.

(B) A statement that only proprietary materials actually employed in the project are eligible for the project rate. The filer shall provide for the use of a bill of lading clause on all project rate cargo, which shall state that:

All materials included in this bill of lading are of a wholly proprietary nature and shall not be resold or otherwise commercially distributed at destination.

(C) For domestic offshore carriers, a statement that the project rate will cover the carrier's variable costs and contribute to its fixed expenses.

(ii) As an alternative to listing a ''project'' as a separate ''commodity'' under paragraph (a)(5)(i) of this section, project rates can be a stated discount for all commodities, a group of commodities, or particular TLIs thereunder, achieved by algorithms set forth in Tariff Rule 33 (§ 514.15(b)(33)), and properly applied or linked to each commodity and/or TLI, as further described in the ATFI User Guides.

(6) *Codes for non-commodity categories.* A TLI may be applicable to all commodities, or all commodities of a class, on which specific commodity descriptions are not stated, such as ''cargo, n.o.s.'' (not otherwise specified), ''general cargo,'' ''freight—all kinds,'' or other identifying name. Because the ATFI system requires TLIs to be associated with and subsumed within a commodity, TLIs not directly involving specific commodities must still have a ''commodity code.'' Therefore, TLI rates, such as for ''FAK'' and ''NOS'' (entire tariff) will require the first two digits of the ''commodity code'' to be ''00,'' with the next four digits (#'s 3–6) available at filer's option.

(7) *Commodity index.* (i) Each commodity description created under this

section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Filers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, ''Sodium Chloride,'' ''Salt, common,'' etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as ''mixed commodities,'' ''projects'' or ''project rates,'' ''n.o.s'' descriptions, and ''FAK,'' shall be included in the commodity index.

(b) *Tariff Line Items (''TLIs'')*—(1) *General requirements.* (i) All rates and charges shall be stated in a systematic and straightforward manner. Rates, charges, Tariff Rules, regulations or classifications may not be duplicative, conflicting or otherwise ambiguous when compared with items in the same tariff or in any other tariff to which the publishing filer is a party.

(ii) The minimum TLI requisites are a valid, accepted commodity description to which the TLI is applicable, valid filing and effective dates, origin and destination locations or location groups within the scope of the tariff, a rate, rate basis, and service designation.

(2) *Illustrative screen.* (i) As with all ATFI screens, filers shall enter complete and accurate data in all required fields. The information shown on the simulated screen is actually entered on the ''ATFI NEW (Commodity) DESCRIPTION CREATION'' and ''ATFI NEW TLI CREATION'' screens, but when completed, is displayed on the following simulated screen, which is indexed to explanatory subparagraphs (numbers) of this paragraph. An asterisk (*) before an item indicates that the particular field is *NOT* required to be completed, except when the situation requires it (e.g., special case number, or when an entry is required to distinguish the TLI from another TLI within the same commodity).

(ii) Where an optional TLI screen field (*) is filled in, the TLI will apply only to shipments that comply with the condition, e.g., where the packaging type is ''Crate (CRT),'' then only to the particular commodity as crated. Otherwise, if the packaging code is left blank, the TLI would apply to all shipments of the particular commodity, irrespective of the package type.

```
[§ 514.13(b)(2)]        ATFI TARIFF LINE ITEM DETAIL    Today: 01Jan1992
[3]          XYZ Line Worldwide Commodity Tariff [4] ( XYZZ001 )
[5]  9503-10-0010  Electric trains
[6]  TLI#: 9503-10-0010-0001  [8] Amendment Type: R [12] * Spcl.Case #:
[7]  Filed: 01Jan1992  [9] Eff: 01Jan1992  [10] * thru  [11]* Exp:

[13]      Tariff Line Item Detail:     [14]  Rates per Container Load

[15] From: US ATLANTIC PORTS           [16] * VIA
       To:   PARIS, FRANCE                  * VIA   ANTWERP, BELGIUM

[17]   Basis: PC (Per Container) 40/PC [18] Units:USD - US Dollars
[19] Rate(s): 2,310.00 USD                        Ton - 1 KT or 1.000 CBM

[20]     Service: PH - Pier/House
[21] *   (carrier):
[22] *   Packaging: CRT                [23]     * Ctr size:  40
[24] *   Stow Code: BS                 [25]     * Ctr type:  PC
[30] *   Haz code: NHZ                 [27]     * Ctr temp:  NA
[26] *   (stat code): 030817

[28]     TLI Notes: Rate applies on direct vessel call to
                    Antwerp and oncarriage by truck to Paris

[29]  ===================== Assessorial Charges=======================
       Desc Local:      Paris surcharge
             Rule: 6    Min B/L charge
             Rule: 7    CAF
```

(3) *Tariff title.* See §514.11(b)(4).

(4) *Tariff code.* See §514.11(b)(1)(iii).

(5) *(Commodity number and description.)* The screen's description corresponds with the optional HS description for the 6-digit HS code used, as described in paragraph (a)(3)(iii) of this section.

(6) *TLI #.* The 14-digit TLI number consists of the commodity code (first ten digits), as described in paragraph (a) of this section, plus four unique *suffix* TLI digits, controlled by the ATFI system to avoid duplications of, and to differentiate, TLIs within the same commodity. For example, the TLI *suffix* of ''0001'' in the screen is based on a 40-foot container; the *suffix* ''0002'' could be based on a different TLI for a 20-foot container.

(7) *Filing date (''Filed'').* See §514.10(a)(2).

(8) *Amendment type.* The symbol *''R''* stands for a reduction under §514.9(b)(18).

(9) *Effective date (''Effective'').* See §514.10(a)(3). Since the screen amendment is a reduction in foreign commerce and the filer is not a controlled carrier, it can take effect upon filing. See §514.9(b)(18).

(10) *Thru (date).* See §514.10(a)(5). *Special* or *emergency rates* may be filed as thru-date TLIs, with explanation of the rates in the TLI notes, but only if the TLI notes are explanatory, without affecting the level of the rate.

(11) *Expiration date (''Expires'').* See §514.10(a)(4).

(12) *Special case (number).* The special case number (not applicable in the illustration) is assigned by the Commission. See §514.9(b)(19).

(13) *Tariff Line Item Detail.* This section contains the routing, shipment, rate data, etc.

(14) *Rates per Container Load.* This field echoes the rate basis under paragraph (b)(17) of this section.

(15) *Origin/destination.* The origin and destination of the shipment can be a location point or group under § 514.10(b), but must be within the tariff scope under § 514.11(b)(10).

(i) *Between TLIs prohibited.* Every TLI shall have but one origin and destination and may not purport to show the same rate in both directions. See § 514.11(b)(10)(iii).

(ii) *U.S. to/from foreign country.* In foreign commerce, the origin may not include any port or point within the same country in the destination (including the United States).

(16) *''VIA.''* ''VIA'' indicates the port or port group through which the cargo will be carried, outbound from its origin, and/or inbound to its destination, for through transportation. In the illustration, the TLI includes all rates and charges for the inland portion from Antwerp to Paris and is, therefore, a ''through rate.'' See § 514.15(b)(1).

(17) *Rate basis.* In the illustration, the rate basis is ''PC (Per Container)'' under the ''Batch Filing Guide's'' Data Element Dictionary (''DED'') code. Regulations for other rate bases include:

(i) *AV.* When an *Ad Valorem (''AV'')* TLI is published, the filer shall include in the applicable assessorial charges (in commodity description, TLI or Tariff Rule) the algorithm(s) showing the exact method of computing the charge (e.g., shipper's declaration, invoice value, delivered value), and, in Tariff Rule 12 (§ 514.15(b)(12)), the additional liability, if any, assumed by the common carrier in consideration therefor.

(ii) *EA.* TLIs published on an ''Each'' basis shall include specific provisions in Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), for the applicable sizes and dimensions of general packaging units (e.g., barrels, crates, cartons under paragraph (b)(22) of this section) when the number of these packages is the basis for the calculation of freight. Commodity descriptions shall include dimensions and weights for cargo rated on an ''Each'' (''EA'') basis, when the packaging is non-standard (e.g., machinery).

(iii) *W.* TLI's published on a weight only basis shall use the symbol ''W.'' For green salted hides in foreign commerce rated on a weight (''W'') Basis, see Tariff Rule 17 (§ 514.15(b)(17)).

(iv) *WM.* (A) *Whichever is greater.* TLIs published on a weight or measure (''WM'') basis shall be presumed to mean that the basis generating the greater revenue to the carrier will apply. Filers wishing to publish rates based on the lesser revenue of the two alternate bases shall construct Tariff Rules and assessorials which reflect this method of rate computation. Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), shall set forth the carrier's intentions in detail.

(B) *Autos in domestic offshore commerce.* If not rated on an ''EA'' basis under paragraph (b)(17)(ii) of this section, automobiles in domestic offshore commerce may not be rated on either weight *or* measure, whichever is greater (lesser), but only on one of these bases, and, in addition to using the appropriate rate basis code (''M'' or ''W''), the TLI Notes shall reflect the appropriate controlling formula, as follows:

(*1*) *Automobiles rated by measure (''M'').* For automobiles rated by measure, the cubic measurement for the five most recent model years shall be that prescribed by the manufacturer of the particular make and model as shown in Tariff Rule 22 (§ 514.15(b)(22));

(*i*) Automobiles whose measurements are not shown in Tariff Rule 22 shall be individually measured by the carrier. This fact shall be noted on the bill of lading; and

(*ii*) Automobiles which, because of additional accessories or equipment, vary in dimensions from the standard measurements shown in paragraphs (b)(17)(iv)(B)*(1)*, introductory paragraph, and (b)(17)(iv)(B)*(1)(i)* of this section, shall be individually measured by the carrier. This fact shall be noted on the bill of lading along with the actual variation (in cubic feet) from the standard measurements; or

(*2*) *Automobiles rated by weight (''W'').* Each automobile tendered for shipment shall be individually weighed on the carrier's scale. Where the carrier does not possess weighing facilities, the shipper shall have the vehicle weighed by a certified weighmaster and furnish the weighmaster's signed statement to the carrier.

(18) *(Default) Units (of weight/measure.)* The application of all rates and charges shall be clear and definite and explicitly stated per cubic foot, cubic meter, kiloton, kilogram or pound, or specified numbers of such units. In the illustration, the filer has defaulted its tariff to U.S. dollars. See paragraph (b)(19) of this section. The example in the illustration also shows default units of ''1 KT'' or ''1000 CBM,'' which were originally set by the filer in the Tariff Record under § 514.11(b)(6). (The default units are not applicable to the illustrated TLI, which is on a ''Per Container'' basis, but see paragraph (b)(17) of this section.)

(19) *Rate(s).* The rate is the base ocean freight rate to ship the commodity and, in the illustration, is defaulted to U.S. Dollars which can be changed by the filer. See paragraph (b)(18) of this section and § 514.10(c). The commodity description under paragraph (a) of this section, and the TLI, by symbol or TLI note, as appropriate, shall clearly identify and explain the following types of rates and the commodities to which they are applicable:

(i) *Time/Volume rates in foreign commerce.* A time/volume rate means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(A) Time/volume rates may be offered by common carriers or conferences and shall be published as TLIs for each commodity description where they apply. The commodity description shall note the availability and terms of the time/volume rate(s). (See paragraph (a)(2)(ii) of this section.) The TLI(s) shall state in the TLI note(s) that the rate is a time/volume rate.

(B) All rates, charges, classifications, Tariff Rules and practices concerning time/volume rates must be set forth in the appropriate tariff items, e.g., commodity description, TLI, and/or Tariff Rule 26 (§ 514.15(b)(26)), which shall identify the shipment records that will be maintained to support the rate.

(C) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(D) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in Tariff Rule 26, and cross-linked in the commodity record and/or TLI Notes.

(ii) *Open rates in foreign commerce.* An open rate in foreign commerce means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rates on such commodity or commodities. See § 514.15(b)(15).

(A) In the conference tariff, where all TLIs for a given commodity description are opened, the description and commodity index under paragraph (a) of this section shall include the appropriate notation, i.e., the word ''OPEN.'' Where a conference opens a rate at the TLI level, the TLI shall show the rate as ''0.00'' and the TLI Note shall contain the appropriate ''OPEN'' notation. Both commodity description and TLI Note of ''opened'' rates (where applicable) shall refer to Tariff Rule 15 (§ 514.15(b)(15)) which shall clearly define the word ''open,'' as used in the tariff, and indicate where the rates of the individual conference member lines on such items may be found.

(B) Where a conference opens rates pursuant to paragraph (b)(19)(ii)(A) of this section, an individual conference member may not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item, as required by this part. This may be accomplished by the individual common carrier member (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing in a separate tariff for open rates or in the regular conference tariff each member's rates on the opened items, indicating the rates which will be charged by each individual common carrier and the governing Tariff Rules and provisions of the conference tariff applicable

to each common carrier. When conference members publish their open rates in a separate tariff, such tariffs shall identify the conference tariff in which the open-rated condition is reflected.

(C) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of § 514.4(c)(1)(iii), except when special permission is granted by the Commission under § 514.18.

(D) Notwithstanding paragraph (b)(19)(ii)(C) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(*1*) At or above the minimum level set by the conference; or

(*2*) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(iii) *Independent-action rates in foreign commerce.* Each conference agreement must provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the 1984 Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective not later than 10 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, in lieu of the existing conference tariff provision for that rate or service item. For controlled common carriers, see §§ 514.4(d)(4)(iii) and 514.9(b)(11).

(20) *Service.* Under the DED codes, the example indicates that the service will be ''PH—Pier/House.''

(21) *(Carrier.)* In a conference tariff, the ''Carrier'' field is filled in with the SCAC code (under § 514.11(a)(6)) of the carrier, when the TLI is an independent action or open rate of a carrier member of a conference (not applicable in illustration). If not filled in, the field does not appear on the screen. See paragraph (b)(19) of this section.

(22) *Packaging code.* Under the DED, the illustration's packaging code is ''CRT'' (Crate). See paragraph (b)(2)(ii) of this section.

(23) *Ctr size.* The example container size is 40-foot, using the DED code.

(24) *Stow code.* Under the DED, the illustration's stow code is ''BS'' (Bottom Stowage.)

(25) *Ctr type.* Under the DED codes, the example indicates that the container type to be ''PC'' (Dry).

(26) *Stat code.* The statistic code is a numeric field which is provided for convenience to the tariff owner for statistical purposes. The field can handle up to 20 digits. If not filled in, the field does not appear on the screen.

(27) *Ctr temperature.* Under the DED code, the illustration's container temperature requirement is ''NA'' (Not Applicable.)

(28) *TLI notes.* The TLI notes contain facts or circumstances which pertain to the particular rate. Additional rates, conditions which directly affect the rate, or assessorial charges *may not* be contained in the TLI notes, but shall be entered in the appropriate place, such as in the ''Applicable Assessorial Charges'' under paragraph (b)(29) of this section, or in inland rate tables under § 514.15(b)(1).

(29) *Assessorial charges.* Any matter directly affecting the rate, such as assessorial charges, shall be entered in the Assessorial Charges field, as described in § 514.10(d). The illustration shows a (Paris) surcharge and two assessorials found in and linked to Tariff Rules.

(30) *Haz code.* The Hazard code in the example is ''NHZ'' for ''non-hazardous.''

(c) *TLI calculation.* ATFI's calculation feature adds potentially applicable assessorials in algorithm form and these and inland rate charges are added to the basic ocean freight to compute the bottom line (total) freight. For a TLI calculation, as with most other ATFI operator functions, the ATFI user manual (§ 514.8(b)) is almost indispensable. The basic steps for the calculation are:

(1) Retrieve a TLI, such as the example in paragraph (b) of this section.

(2) Exercise the ''*Calc*'' option and an ''ATFI RATE CALCULATION'' screen

appears. It is very similar to the ATFI TARIFF LINE ITEM DETAIL screen in paragraph (b) of this section, except that the retrieving operator enters the actual shipment data in the appropriate fields. Once these data are entered and verified, the operator presses another ''*Calc*'' key and screens similar to the following simulated screens (''ATFI RATING RESULTS,'' (i) and (ii)) are used to show the ''Total Freight'' (''bottom-line freight''):

```
[§ 514.13(c)(2)(i)]
        ATFI RATING RESULTS
 XYZ Line Worldwide Commodity Tariff
            ( XYZZ001 )

Commodity:  Electric trains
     TLI:  9503-10-0010-0001

Actual weight: 0.000 KT
Actual volume: 0.000 CBM

        Rate Break Table
-----------------------------
2,310.00USD/  PC <--- Selected Rate

===  Establishing Rating Values
                      (Cycle 0) ===

===  Establishing Ocean Freight
                      (Cycle 1) ===

Basic Ocean Freight     2,310.00USD
```

```
[§ 514.13(c)(2)(ii)]

        ATFI RATING RESULTS

 XYZ Line Worldwide Commodity Tariff
            ( XYZZ001 )

Freight Basis is  PC
Shipment Rated at        2,310.00USD
Shipment Freighted as    1 CTR

===      Beginning Rating        ===

Basic Ocean Freight      2,310.00USD
Paris surcharge            100.00USD
                        ------------
Subtotal                 2,410.00USD

CAF                        163.26USD
                        ------------
        Total Freight    2,573.26USD

======= End of Rating Results ======
```

(3) The bottom-line rate calculation facilitates estimation of the total charges for the shipment. However, ''Total Freight'' may not always be the freight paid by the shipper because of operator error or the application of other assessorial charges which were not in algorithm form because they could not be determined prior to shipment, e.g., detention charges. Such non-predeterminable charges, however, would be flagged for the retriever as potential charges through the dummy algorithm feature under § 514.10(d)(1)(iv).

(4) For the basic ocean freight rate and each item that may be added to it to find the overall cost, a proof screen may be used for verification after the calculation.

§ 514.14 [Reserved]

§ 514.15 Tariff Rules.

(a) *General.* (1) This section requires the electronic filing of certain tariff matter other than the major ATFI objects (TLIs, etc.) addressed elsewhere in this part, which in any way affects the application of the tariff or is related to tariff objects, as prescribed in this part. Matter required to be filed by this section shall be contained in the ATFI tariff, either:

(i) In mandatorily numbered and titled Tariff Rules under paragraph (b) of this section; or

(ii) Where the listed mandatory subjects of Tariff Rules would not include a specific proposed rule or other tariff matter of the filer, in optional Tariff

Rules under paragraph (c) of this section, with the filer selecting the number (beginning with number 100) and title.

(2) *Algorithms and text.* (i) Where the Tariff Rule directly affects a commodity or TLI, e.g., by the addition of a surcharge for certain conditions, the assessorial charge calculation/condition statement (and assessorial table, where applicable) shall be set forth in the Tariff Rule as an algorithm if determinable prior to shipment. This algorithm shall be electronically linked to each tariff item to which it applies, as described in § 514.10(d) and in the ATFI Batch Filing Guide and ATFI Tariff Filing Guide.

(ii) Contents of Tariff Rules other than algorithms shall be entered in full-text format, be clear, explicit and complete, and be linked to appropriate items through the dummy algorithm functionality described in § 514.10(d)(1)(iv).

(3) *Application of rule.* Where a Tariff Rule affects only particular items, each affected item, e.g., commodity description, TLI, etc., shall specifically refer and be linked to such rule, as described in the ATFI Batch Filing and ATFI Tariff Filing Guides.

(4) *Subrules.* Where the subject or title of a Tariff Rule permits, obviously-related subrules may be used.

(5) *Rules tariffs.* Tariff Rules may also be contained in separate tariffs, as described in § 514.12.

(6) *Rule Access Window.* ATFI's Rule Access Window lists by Tariff Rule number and title all of the Tariff Rules contained in a particular tariff.

(b) *Mandatory Tariff Rules.* Specific Tariff Rules affecting the tariff, and/or other materials required by this part to be included in Tariff Rules, shall be contained in the appropriate Tariff Rules, as designated by the numbers and titles specified in this paragraph. Where notes to commodity descriptions and/or TLIs contain matter that would otherwise be normally contained in Tariff Rules, the applicable Tariff Rule(s) need not duplicate such matter but may simply indicate that the tariff is structured in this manner. In the event that a particular title contained in this paragraph does not apply to any matter affecting the tariff, the rule number and title shall be entered with a statement that the rule is not applicable (''N/A''). See § 514.12(a)(i). Tariff matter obviously falling within a particular title may not be contained in another, less descriptive title and, where a mandatory subject under this paragraph is not applicable, the tariff matter shall be filed in an optional rule under paragraph (c) of this section, with the appropriate title. Mandatory Tariff Rule (and subparagraph) numbers, titles, content (as also may be required by other sections of this part, cross referenced in this paragraph) are as follows:

(1) *Scope.* As described in § 514.11(b)(10), the Tariff Record's scope is briefly set forth in location and/or location group pairs for origin and destination. Tariff Rule 1 shall be consistent with the Tariff Record scope, but describe it in complete detail, especially for the following types of tariffs or tariff items:

(i) *Foreign and domestic (offshore) commodity tariffs.*

(ii) *Equipment interchange tariffs* under § 514.12(b)(3)(ii).

(iii) *Intermodal services.*

(A) Tariff Rule 1 shall describe the modes of intermodal service provided (e.g., rail, truck, etc.).

(B) Tariff Rule 1 shall indicate whether the tariff TLIs are ''through rates,'' which include the rates for all services on the overall route, are combination rates to which rate(s) for other transportation must be added, or both.

(C) Common carriers and conferences which publish more than one intermodal rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Tariff Rule 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

(D) Tariff Rule 1 shall include a description of any alternate port service, or other substituted service, intended to be offered. If this service falls within the definition of ''transshipment,'' Tariff Rule 1 shall cross-reference Tariff Rule 13, where transshipment services are described.

(E) TLIs involving intermodal service shall include an appropriate statement to this effect in the applicable commodity description record(s) and/or TLI notes under § 514.13, but all rates and charges affecting the TLI shall be entered in the proper form in the Applicable Assessorial Charges section and/or inland rate tables.

(F) If a carrier or conference desires to provide intermodal transportation to or from named points at combination rates, it shall clearly and accurately set forth the applicable charges in the ATFI ''Inland Rate Tables'' file. Other tables, similar to inland rate tables in that they result in the addition of amounts to TLIs, such as surcharges (assessorials), may be constructed in algorithm format under § 514.10(d) and paragraph (a) of this section. The ATFI ''Batch Filing Guide'' and the ATFI Tariff Filing Guide provide details on the data creation and filing requirements for inland rate tables, as well as for Tariff Rules' tables.

(2) *Application of rates and charges.* Tariff Rule 2 shall contain a clear and definite statement of:

(i) All services provided to the shipper and covered by the TLIs, including the rate bases set forth in §§ 514.13(b)(17)(ii) and (b)(17)(iv)(A); and

(ii) The extent of any limitation or restriction, if the application of any of the rates, charges, Tariff Rules or regulations stated in the tariff is restricted to any particular port, pier, etc.

(3) *Rate applicability rule.* Tariff Rule 3 shall contain a clear and definite statement of the time at which tariff changes become applicable to any particular shipment, including the following:

(i) *In foreign commerce,* the tariff rates, Tariff Rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation).

(ii) *In domestic offshore commerce,* for joint rates in intermodal transportation, the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(4) *Heavy lift.* Tariff Rule 4 shall contain a clear and definite statement of all heavy lift practices and charges.

(5) *Extra length.* Tariff Rule 5 shall contain a clear and definite statement of all extra length practices and charges.

(6) *Minimum bill of lading charges.* Tariff Rule 6 shall contain a clear and definite statement of minimum bill of lading charges and applicability.

(7) *Payment of freight charges.* Tariff Rule 7 shall contain a clear and definite statement of:

(i) All requirements for the payment of freight charges;

(ii) Currency restrictions, if any, and the basis for determining the rates of currency exchange (see § 514.10(c)); and

(iii) If credit is extended to shippers, the credit terms available and the conditions upon which credit is extended. In foreign commerce, when credit applications or agreements are required, specimens of such applications or agreements shall be filed as part of this Tariff Rule.

(8) *Bill(s) of lading.* Unless a governing bill of lading tariff has been filed under § 514.12(a)(1)(iv), Tariff Rule 8 shall contain all clauses of every applicable specimen copy of any bill of lading, contract of affreightment, and other document (except for a service contract and its essential terms under §§ 514.7 and 514.17) evidencing the transportation agreement between carrier and shipper. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier's Federal Maritime Commission tariffs and may not contain provisions inconsistent with the Tariff Rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* Tariff Rule 9 shall contain a clear and definite statement of:

(i) *In foreign commerce,* the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(ii) *In domestic offshore commerce,* the exact rate or rates, if any, to be paid ocean freight forwarders (see also § 510.23(d) of this chapter).

(10) *Surcharges and arbitraries.* Tariff Rule 10 shall contain algorithms and explanatory text of surcharges and arbitraries for items not elsewhere provided for in this section. Rates from or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified ''base port,'' provided that any such arbitrary or differential is clearly defined, set forth as an algorithm (with table, if necessary) and is referenced (linked) in the commodity description or TLI affected.

(11) *Minimum quantity rates.* See also § 514.13(a)(2)(i)(C). Tariff Rule 11 shall state:

(i) *For foreign commerce:*

When two or more TLIs are named for the same commodity over the same route and under similar conditions, and the application is dependent upon the quantity of the commodity shipped, the total freight charges assessed against the shipment may not exceed the total charges computed for a larger quantity, if the TLI specifying a required minimum quantity (either weight or measurement per container or in containers), will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower TLI if the weight or measurement declared for rating purposes is increased to the minimum level.

(ii) *For domestic offshore commerce:*

When two or more TLIs are named for the same commodity, and the application is dependent upon the quantity of the commodity shipped, the charges assessed against the smaller shipment may not exceed those for any larger quantity.

(12) *Ad Valorem Rates.* Tariff Rule 12 shall contain a clear and definite statement of:

(i) The method of computing an *ad valorem* TLI or charge, to the extent not included elsewhere in the tariff (e.g., in connection with a TLI under § 514.13(b)(17)(i)); and

(ii) The additional liability, if any, assumed by the tariff owner in consideration for the *ad valorem* rate or charge.

(13) *Transshipment.* When transshipment services are offered pursuant to an ongoing agreement, Tariff Rule 13 shall contain:

(i) The through rate;

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

(iii) A provision substantially as follows:

The Tariff 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 Tariff Rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) *Co-Loading in foreign commerce.* Tariff Rule 14 governs co-loading by NVOCCs in foreign commerce and shall contain the following provisions:

(i) *Filing requirements.* (A) If an NVOCC does not tender cargo for co-loading, Tariff Rule 14 shall so indicate.

(B) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in Tariff Rule 14.

(C) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe in Tariff Rule 14 its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(ii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(iii) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo

is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

(15) *Open rates in foreign commerce.* Tariff Rule 15 of a conference tariff shall contain a clear and definite statement of:

(i) The meaning of the word ''open'' in ''open rates,'' and the extent to which conference rates have been opened pursuant to § 514.13(b)(19)(ii);

(ii) Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable Tariff Rules and regulations of the conference tariff will continue to govern the rates filed by each individual line; and

(iii) Where the rates of the individual conference member lines on open-rated items may be found.

(16) *Hazardous cargo.* When TLIs for explosive, inflammable, corrosive, or other dangerous materials are published (or Tariff Rule 16 does not specifically prohibit carriage of such materials), Tariff Rule 16 shall contain either:

(i) Tariff Rules governing the carriage of all types of hazardous cargo; or

(ii) Reference to applicable governing and/or general reference tariffs, as described in § 514.12.

(17) *Green salted hides in foreign commerce.* For foreign commerce, Tariff Rule 17 shall require that:

(i) The shipping weight for purposes of assessing transportation charges on green salted hides shall be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in the commodity description record or TLI, as referenced by § 514.13(b)(17)(iii); and

(ii) The shipper furnish the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo in foreign commerce.* Where the tariff owner offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TLI assessed on the original movement, when such TLI is lower than the prevailing TLI, Tariff Rule 18 shall provide that:

(i) The return of shipment(s) be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same common carrier performing the original movement, except that in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff; and

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests in foreign commerce.* Tariff Rule 19 shall contain clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the 1984 Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge claims.* Tariff Rule 20 shall contain provisions that conform to the following:

(i) No tariff may limit the filing of overcharge claims with a common carrier for private settlement to a period (beginning with the accrual of the cause of action) ending in less than:

(A) Three years in foreign commerce; or

(B) Two years in domestic offshore commerce.

(ii) The acceptance of any overcharge claim may not be conditioned upon the payment of a fee or charge.

(iii) No tariff may require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(iv) Tariff Rule 20 shall also:

(A) Provide that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application; and

(B) Clearly indicate where and by what method such claims are to be filed with the common carrier and that

such claims may also be filed with the Federal Maritime Commission. At a minimum, Tariff Rule 20 shall contain the following provisions:

(*1*) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within 20 days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the 1916 Act or 1984 Act.

(*2*) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to either:

(*i*) Section 11(g) of the Shipping Act of 1984 (46 U.S.C. app. 1710) for foreign commerce, and that such claims must be filed within *three years* of the date the cause of action accrued; or

(*ii*) Section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821) for domestic offshore commerce, and that such claims must be filed within *two years* of the date the cause of action accrues.

(21) *Use of carrier equipment.* Tariff Rule 21 shall contain provisions conforming to the following regulations:

(i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers, or other persons acting as the agent for the person paying the freight charges:

(A) A sample equipment interchange agreement, or the terms and conditions governing the use of said equipment, shall be published in the carrier's or conference's Tariff Rule 21. The sample agreement shall include: the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services, such as tracing and replenishing fuel or refrigerant for reefer containers), that govern the use of carrier-provided equipment, including cargo containers, trailers and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the agreement or Tariff Rule 21, as applicable, and shall clearly identify the location and type of equipment to which they apply.

(B) If a carrier or conference does not have a sample equipment interchange agreement, the carrier shall publish its terms and conditions and standard free time and charges in its Tariff Rule 21, as described in paragraph (b)(21)(i)(A) of this section. In foreign commerce, where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Tariff Rule 21 shall contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be arranged in alphabetical order of the parties to which the exceptions apply and shall be included in either:

(A) Tariff Rule 21; or

(B) A separate equipment interchange tariff filed by the carrier or conference in accordance with § 514.12(b)(3), in which case Tariff Rule 21 shall identify the separate equipment interchange tariff containing the exceptions. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

(22) *Automobile Rates in domestic offshore commerce.* If TLIs for automobiles are published on a volume basis, as described in § 514.13(b)(17)(iv)(B)*(1)*, introductory paragraph, Tariff Rule 22 shall contain:

(i) The cubic measurement for the five most recent model years prescribed by the manufacturer of each applicable particular make or model, arranged in table form with reference to applicable TLIs; and

(ii) A clear and definite description of all other applicable regulations, if not contained in the commodity description record(s).

(23) *Carrier terminal rules and charges.* Tariff Rule 23 of carrier and conference tariffs:

(i) Shall state separately every terminal or other charge and discount and service (including privileges, facilities and services) under the control of the common carrier or conference which is granted or allowed to any shipper, consignee, or passenger, regardless of whether the service results in a charge

or discount separately assessed as an addition to or subtraction from the carrier's basic TLI, in which case it shall be set forth as an algorithm, or is simply included within the basic TLI, without differentiation;

(ii) [Reserved]

(iii) May provide for an amendment, effective upon filing:

(A) Increasing a charge for terminal services, canal tolls or additional items, without the increase being separately stated on the bill of lading, but only if such charge is not under the control of the filing common carrier or conference, which merely acts as a collection agent for the charge, and the agency making such charge to the common carrier or conference increases the charge without notice to the common carrier or conference and is identified in Tariff Rule 23 by name and appropriate tariff number (see § 514.9(b)(20)); and

(B) For domestic offshore commerce, establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor (see § 514.9(b)(16)(i)(B)).

(24) *Financial responsibility for NVOCCs in foreign commerce and legal agent for service of process.* (i) Every non-vessel-operating common carrier (''NVOCC'') shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission proof of financial responsibility in the manner and amount required by 46 CFR 583.4 for the payment of any judgment for damages arising from its transportation-related activities under the Shipping Act of 1984, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state the manner of its financial responsibility; whether it is relying in whole or in part on coverage provided by a group or association of NVOCCs to which it is a member; the name(s) and address(es) of the surety company(ies), insurance company(ies) or guarantor(s) issuing the bond(s), insurance policy(ies) or guaranty(ies); the bond(s), insurance policy(ies) or guaranty(ies) number(s); and, where applicable, the name and address of the group or association of NVOCCs providing full or partial coverage.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpoenas. Every NVOCC using a group or association of NVOCCs not domiciled in the United States for financial coverage, in whole or in part, pursuant to § 583.4 shall state in its tariff the name and address of the group or association's resident agent for service of judicial and administrative process, including subpoenas. The NVOCC also shall state in Tariff Rule 24 that, in any instance in which the designated legal agent(s) cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

(iii) Service of administrative process, other than subpenas, may be effected upon the legal agent by mailing a copy of the documents to be served by certified or registered mail, return receipt requested.

(25) *Certification of shipper status in foreign commerce.* If a common carrier adopts a procedure other than those set forth in § 583.7 (b)(1) or (b)(2) of this chapter, for determining whether NVOCCs for whom it wishes to transport cargo have complied with the tariff and bonding requirements of sections 8 and 23 of the 1984 Act, that procedure shall be clearly set forth in Tariff Rule 25 of its tariff.

(26) *Time/volume rates in foreign commerce.* In connection with time/volume rates offered under § 514.13(b)(19)(i), Tariff Rule 26 of common carrier and conference tariffs in foreign commerce shall clearly and accurately:

(i) State all charges, classifications, rules and practices concerning time/volume rates;

(ii) Identify the shipment records which will be maintained to support the rates;

(iii) Describe the method to be used for shippers giving notice of their intention to use a time/volume rate prior to tendering any shipment under the time/volume-rate arrangements; and

(iv) State that:

(A) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment; and

(B) Shipper notices and shipment records supporting a time/volume rate will be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(27) *Loyalty contracts in foreign commerce.* Where the filer intends to use a loyalty contract in foreign commerce:

(i) Tariff Rule 27 shall contain a sample of every loyalty contract, as defined in 46 CFR 514.2, together with regulations which set forth the scope and application of the contract system.

(ii) The use of any sample loyalty contract and applicable regulations filed for inclusion in a tariff under paragraph (b)(27) of this section shall be presumed to be ''in conformity with the antitrust laws,'' within the meaning of section 10(b)(9) of the 1984 Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR 50.6, indicating no objection to the use of that contract.

(28) *Definitions.* Tariff Rule 28 shall include any filer definitions of technical terms which, however, may not be inconsistent with the 1916 or 1984 Acts or this part.

(29) *Symbols.* Tariff Rule 29 shall include any filer symbols, service codes, etc. and explanations therefor which, however, may not be inconsistent with the those set forth in this part or the ''Batch Filing Guide.''

(30) *Access to tariff information.* Tariff Rule 30 shall contain a clear and complete description of all costs, conditions and arrangements for public inspection of tariff material, including reasonable provisions for access to emergency tariff(s) under §§ 514.8(k)(1)(iv) and (k)(1)(v).

(31) *Seasonal discontinuance.* (i) Tariff Rule 31 shall contain announcements of seasonal discontinuance or restoration of service, which shall be filed on not less than ten days' notice, except by special permission under § 514.18. Such announcements shall contain a brief statement announcing the date of discontinuance and/or restoration of service and may include no other tariff matter. The TLIs associated with service discontinuance or restoration shall be amended, expired or filed as applicable, and shall meet all criteria for TLI filings/amendments.

(ii) Tariff Rule 31 of tariffs naming rates, fares or Tariff Rules applicable to all water routes which are closed to navigation during part of a year shall:

(A) Contain provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued; and

(B) Expressly provide for the seasonal discontinuance provision's own expiration at the close of the navigation season, or include a rule providing for the discontinuance/restoration of service based on the stated navigation season.

(32) [Reserved]

(33) *Project rates.* Tariff Rule 33 shall contain complete descriptions of all project rates which are stated discounts of other TLI's for given commodities under § 514.13(a)(5)(ii). For domestic offshore carriers, Tariff Rule 33 shall also include a statement that all project rates will cover the carrier's variable costs and contribute to its fixed expenses.

(34) *Terminal Tariffs.* Tariff Rule 34 shall contain the full-text portions of all terminal tariffs filed by marine terminal operators (excluding the Organization Record and Tariff Record, which must be established under § 514.11). Other, mandatory Tariff Rules under this section which are designed for carriers and conferences shall be designated ''Not Applicable'' or ''NA.'' For logical divisions within the terminal tariff, filers should use subrules, as described in paragraph (a)(4) of this section.

(c) *Optional Tariff Rules.* Tariff Rules numbers 100 and up (to be numbered

consecutively) are available for carrier/conference use.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 58 FR 5622, Jan. 22, 1993; 58 FR 28790, May 17, 1993; 60 FR 27230, May 23, 1995]

§ 514.16 [Reserved]

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) *General.* (1) A concise statement of the essential terms (ETs) of every initial service contract (which is filed in paper form under § 514.7) and appropriate amendments to ETs resulting from any amendment of the filed service contract, shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format. Unlike most other tariff data, ETs shall be filed largely in full text, with a minimum of database formatting (but with certain other standardization), as set forth in this section. Additionally, ETs are not subject to the algorithm or linkage requirements of § 514.10(d). Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for each of the carrier's or conference's service contracts.

(2) *Cross-references*—(i) *Authority to file:* § 514.4(d)(5).

(ii) *Cancellation:* § 514.4(e)(2).

(iii) *Availability of essential terms:* § 514.7(f).

(iv) *Rejection of service contracts and/or essential terms:* § 514.7(j).

(v) *Modification, correction and cancellation:* § 514.7(k).

(vi) *Assessorials and algorithms:* § 514.10(d)(1).

(b) *Essential terms publication*—(1) *Creation and form.* The ETP is created and maintained by the filer as a separate *tariff type (''ET'' for ''ETP'')* with a tariff record and number (see § 514.11(b)). A service-contract filer, either carrier or conference, may have only one ETP for all its ETs. The ETP may also contain matter of general applicability to all ETs contained therein, such as Tariff Rules. The ATFI system will coordinate development of ET search indexes by, for example: ET, service contract or FMC file number; by commodity name or number; by TLI number; and, by origin or destination of the commodity.

(2) *Reference to/in tariffs of general applicability.* The ETP shall:

(i) Contain reference to each carrier's or conference's tariff of general applicability; and

(ii) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under this part.

(c) *Statement(s) of essential terms; general requirements.* (1) Essential terms shall be promptly filed by the appropriate person, in the carrier's or conference's ETP and in the content and tariff format as provided by this part. (The service contract, in paper form, is required to be filed within ten (10) days of the electronic filing of the essential terms under § 514.7(g).)

(2) Essential terms may not:

(i) Be uncertain, vague or ambiguous; or

(ii) Contain any provision permitting modification by the parties other than in full compliance with this part.

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI simulated screen illustrates the elements required to be contained in essential terms filings and how they may appear in the ATFI system. The references in brackets in each line are to the subparagraphs of this paragraph which explain the requirements for the fields and the data contained therein. See paragraph (b)(1) of this section for provisions regarding the essential terms publication. On the screen, data above the double line, i.e., down through ''Contract Termination,'' shall be entered in database format in the special fields provided; data beginning with Mandatory Term No. 3 (''Commodities'') shall be entered in ''full-text'' format without the application of algorithms under § 514.10(d). However, the mandatory ETs (Nos. 1 to 10) shall bear the appropriate term number and exact mandatory term title, as set forth in this paragraph (and the screen). If the mandatory term does not apply (e.g., No. 7 or No. 8), the filer shall also enter the symbol ''NA.''

[§ 514.17(d)(1)] ATFI ESSENTIAL TERMS SEARCH

	JKL Line Essential Terms Publication (XYZ 004)	[1]
ET Num: 681	Personal Computers from Taiwan	[2]
SC Num: 765	Amendment Num: 3—Available until: 31 Jan 1992	[3]
FMC File Num: 123456	Contract Effective: 01 Dec 1992	[4]
Amendment Type: C	Special Case: 123456—Contract Expiration: 15 Jan 1993.	[5]
Filing Date: 01 Jan 1992	Contract Termination: 15 Jan 1993	[6]

Term	(Amend)	List of essential terms titles	[7]
1	(0)	Origin	[i]
2	(0)	Destination	[ii]
3	(0)	Commodities	[iii]
4	(1)	Minimum Quantity	[iv]
4	A(0)	Minimum Quantity in 20ft containers	[A]
4	B(3)	Minimum Quantity in 40ft containers	[B]
5	(0)	Service Commitments	[v]
6	(0)	Contract Rates or Rate Schedules(s)	[vi]
7	(2)	Liquidated Damages for Non-Performance (if any)	[vii]
8	(0)	Later Events Causing Deviation From ET (if any)	[viii]
9	(0)	Duration of the Contract (e.g., ''46 days from 01 Dec. 1992 to 15 Jan. 1993'')	[ix]
10	(0)	Assessorials	[x]
100	(0)	(Title and text—Optional)	[8]
101	(0)	(Title and text—Optional)	[8]
[999 zzz	(999)	Maximum term and amendment values]	

(2)(i) *ET Num (statement of essential terms number).* The ''ET Num'' is defined by the filer and shall be entered in the appropriate field. See § 514.7(h).

(ii) *ET Heading.* The filer's title of the ET document (e.g., ''Personal Computers from Taiwan'') is entered here and will appear in the ETP index to the included ETs.

(3)(i) *SC NUM (service contract number).* The ''SC Num'' is defined by the filer and shall be entered in the appropriate field. See § 514.7(h).

(ii) *Amendment Num.* Where feasible, ETs should be amended by amending only the affected specific term(s) or subterms, mandatory or optional. Each time any part of an ET is amended, the filer shall assign a consecutive ET amendment number (up to three digits), beginning with the number ''1.'' (The amendment number field must be ''0'' or void for the initial ET filing.) Each time any part of the ET is amended, the ET ''Filing Date'' will be the date of filing of the amendment and the ''Available Until Date'' will be 30 days from the filing date, but the filer can enter a later date, making the availability period longer. See correction provisions under § 514.7(k) and paragraph (d)(5)(ii) of this section.

(iii) *Available until.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the ''Filing Date'' (paragraph (d)(6)(i) of this section and § 514.10(a)(2)) of the initial filing or the latest amendment, to the ''Available until'' date (automatically defaulted to 30 days from the Filing Date by the interactive ATFI system, but the filer can enter a later date, making the availability period longer).

(4)(i) *FMC File Num.* The FMC File Numbers will be system assigned as initial ET filings are received/processed. The FMC File Numbers will be assigned sequentially and will start at a number designated by FMC at production start. The FMC File Number will be provided to filers in the acknowledge message (EMail) for filings so that they can put the number in the related service contract when it is filed in paper form. See § 514.7(h)(1)(iii)(B). This procedure will facilitate FMC linkage of the ET to its related service contract.

(ii) *Contract effective.* In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see paragraph (d)(5)(iii) of this section and §§ 514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in

mandatory essential term No. 9, where the duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date).

(5)(i) *Amendment type.* All ATFI amendment codes under § 514.9, except ''G'' and ''S'' (§§ 514.9(b)(7) and 514.9(b)(19)), may be used in any combination, with up to three amendment codes for amendments to ETs. No notice period is required for amendments to ETs, except that amendments to ETs require a new ''Available until'' date, which must be at least 30 days from the filing date. For the amendment code ''S,'' see paragraph (d)(5)(ii) of this section.

(ii) *Special Case symbol and number.* The ''S'' amendment code (for special case under § 514.9(b)(19)(iii)) must be used singly, and in conjunction with a validated special case number for corrections to ETs. See correction provisions under § 514.7(k).

(iii) *Contract expiration.* See paragraph (d)(4)(ii) of this section.

(6)(i) *Filing date.* The filing date is automatically set by the system whenever an ET or amendment thereto is filed. See ''Available until'' in paragraph (d)(3)(iii) of this section.

(ii) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date under paragraph (d)(5)(iii) of this section, unless terminated sooner, in which case the filer would enter the earlier date when the termination event occurred.

(7) *Terms and subterms.* Mandatory essential terms Nos. 1 to 10 shall address the subjects and bear the terms' titles for the respective numbers exactly as provided in this section. If a subject is not included, such as No. 7 or No. 8, the number must be listed with the appropriate title and the designation ''NA.'' All essential terms, mandatory and optional, may be subdivided into subterms (as illustrated for mandatory term No. 4) to facilitate retrieval and amendment. The mandatory terms are as follows:

(i) *Origin (No. 1).* ''Origin'' includes the origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of ''port ranges'' or ''geographic areas,'' but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Origin point and port locations will be validated against the ATFI Locations database. The validated names will be ''inserted'' by the system in Mandatory Term #1. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 1, full text may be used in subterms.

(ii) *Destination (No. 2).* ''Destination'' includes the destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of ''port ranges'' or ''geographic areas,'' but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Destination point and port locations will be validated against the ATFI Locations database. The validated names will be ''inserted'' by the system in Mandatory Term #2. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 2, full text may be used in subterms.

(iii) *Commodities (No. 3).* Mandatory term No. 3 shall include commodities covered by the service contract, but these commodities may not be entered as described in § 514.13(a), i.e., commodities cannot be entered in data-element format, but the full-text format may incorporate the same elements of information, as desired. See § 514.7(c) for exempt commodities. For each commodity filed in this term, a separate formatted commodity index entry is required.

(iv) *Minimum quantity (No. 4).* Mandatory term No. 4 shall address the minimum quantity or volume of cargo and/or amount of freight revenue necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(A) *Subterm.* Example: Minimum quantity in 20FT Containers.

(B) *Subterm.* Example: Minimum quantity in 40FT Containers.

(v) *Service commitments (No. 5).* Mandatory term No. 5 shall address the service commitments of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(vi) *Contract rates or rate schedule(s) (No. 6).* Mandatory term No. 6 shall contain the contract rates or rate schedules, including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

(vii) *Liquidated damages for non-performance (if any) (No. 7).* Mandatory term No. 7 shall include liquidated damages for non-performance. See § 514.7(1).

(viii) *Later events causing deviation from ET (if any) (No. 8).* Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, mandatory term No. 8 shall include a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. See § 514.7(1). This requirement applies to, *inter alia,* the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied.

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential term of the contract.

(ix) *Duration of the Contract (No. 9).* The duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date). See paragraph (d)(4)(ii) and (d)(5)(iii) of this section.

(x) *Assessorials (No. 10).* Mandatory Term 10 shall contain all ET assessorials, preferably using a separate subterm for each type of assessorial. For every assessorial, the filer shall set forth either:

(A) The full assessorial; or

(B) A complete cross-reference to the place(s) where it may be found.

(8) *Optional terms.* Any essential term of a service contract not otherwise specifically provided for in this section shall be entered after the mandatory terms and in numerical order, beginning with No. 100.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 61 FR 35686, July 8, 1996]

§ 514.18 Special permission.

(a) *General.* Section 8(d) of the 1984 Act and section 2 of the 1933 Act authorize the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 514.9. Section 9(c) of the 1984 Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission

will grant such permission only in cases where merit is demonstrated.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after filing the defective tariff material. For correction of clerical errors in the essential terms of service contracts, see § 514.7(k)(2).

(c) *Application*—(1) *By authorized official; filing fee.* Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization under § 514.4(d) to file the tariff matter. Every such application shall be submitted to BTCL and be accompanied by the filing fee provided in § 514.21.

(2) *Transmittal.* Application for special permission shall be made only by cable, telegram or letter, except that in emergency situations, application may be made by telephone if the telephone communication is promptly followed by a cable, telex or letter and the filing fee.

(3) *Content.* Except as provided in § 514.7(k)(2) for correction of essential terms, applications for special permission shall contain the following information:

(i) The organization name, number and d/b/a of the conference or carrier under § 514.11(b);

(ii) The tariff number, title and tariff code under § 514.11(b); and

(iii) The rate, commodity, Tariff Rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* (1) If all conditions are complied with and if the authority granted by special permission is used, it shall be used in its entirety and in the manner set forth by the Commission, including the prompt electronic filing of the material for which permission is requested, with the filer using the special case number assigned by the Commission for that filing and the special case symbol ''*S*,'' as prescribed in § 514.9(b)(19)(i).

(2) If Commission-specified conditions are not complied with, or if the exact authority granted by the special permission is not used and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 46324, Oct. 8, 1992; 58 FR 30, Jan. 4, 1993]

§ 514.19 Suspension of tariff matter.

All use of suspended tariff matter shall be deferred for the period specified in the Commission's suspension order. In addition to other affected places in the tariff, as provided in this section, the fact that tariff matter is suspended is also displayed through the ''Status'' function in the command line, as described in § 514.8(n)(3).

(a) *Domestic offshore commerce*—(1) *Suspension; period.* The Commission may suspend from use any rate, fare, charge, classification, Tariff Rule, regulation, or practice of a domestic offshore carrier for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, BTCL shall immediately make the appropriate entry in the domestic offshore carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff matter suspended and sets forth any tariff provisions which may remain effective in lieu of the suspended provisions;

(ii) Bears an effective date coinciding with that in the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such

direction, reproduces the suspension order in its entirety.

(3) *Amendment of suspended tariff matter.* (i) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except through use of the special case number and symbol procedure under § 514.9(b)(19) referred to in the order or special permission issued by the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(ii) If, prior to receiving a suspension order, a carrier files an amendment reissuing, deleting, canceling or amending any tariff matter named in a subsequent suspension order, the amendment shall be rejected.

(4) *Vacating suspension of tariff matter.* Should the Commission vacate a suspension order earlier than the date to which the subject tariff matter was originally suspended, BTCL shall immediately change the thru date to the specified date in the Commission's order vacating the suspension order.

(5) *Cancellation of suspended matter.* (i) Should the Commission subsequently cancel all or any part of previously-suspended tariff matter, BTCL shall immediately change the expiration date to the date of cancellation set forth in the Commission's order. See § 514.4(e).

(ii) If suspended tariff matter is not canceled by the Commission prior to its thru date, it shall take effect automatically on the thru date and any tariff matter which was continued in effect during the suspension period shall be automatically superseded by the tariff matter that had been suspended but was not canceled.

(b) Controlled common carriers in foreign commerce.

(1) *Suspension; period.* Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon the Commission's issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, the Commission's BTCL shall immediately make the appropriate entry into the controlled common carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff material suspended;

(ii) Bears an effective date coinciding with that of the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Replacement rates.* (i) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter:

(A) May become effective immediately upon filing or upon the effective date of the suspension, whichever is later; and

(B) Shall be filed using the special case symbol and number issued by the Commission under § 514.9(b)(19).

(ii) In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(iii) At the same time it files replacement rates, the controlled common carrier shall submit to BTCL a letter (in paper format) identifying the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or Tariff Rules resulting in total charges which equal or are lower than its own.

(c) *Other suspension situations.* When the Commission, upon good cause shown, issues an order to suspend tariff matter not addressed in paragraphs (a) or (b) of this section, it will set forth in the order the procedures for effectuating the suspension.

(d) *Other filings in suspension situations.* In suspension situations, when filings, not provided for elsewhere in this section and not otherwise permitted by the rules of this part, may become necessary or desirable, such filings may be directed by the Commission and shall use the assigned special case symbol and number procedure under § 514.9(b)(19).

§ 514.20 Retrieval.

(a) *General.* The Commission will not provide to the public tariff data in paper format, except pursuant to requests for certification of copies for court or government agency use, as provided in § 514.8(k)(2).

(b) *User charges.* User charges for services under this section are provided in § 514.21.

(c) *Interactive retrieval.* Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal (see § 514.8(e)), and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter which has been filed in the ATFI database.

(1) *Registration.* Every public interactive retriever will be required to register in advance with BTCL under § 514.8(f) to obtain a USERID and password.

(2) *Automatic logoff.* All retrievers will be automatically logged off after 10 minutes of inactivity.

(3) *Remote retrieval by modem.* A public retriever may access and/or obtain (through screen prints) ATFI filed tariff data through modem and telecommunications links and procedures authorized by the Commission.

(4) *Tariff Control Center.* A public retriever may access and/or obtain ATFI filed tariff data through personal operation of one of several terminals provided in the Tariff Control Center at the FMC headquarters in Washington, D.C.

(d) *Batch retrieval through data base files.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily basis. The ATFI System Administrator will create a daily subscriber data update file which will be accessible to subscribers. The daily updates subscriber will access the ATFI system to on-line download the tariff updates received during the previous workday and any intervening weekend/holidays, as well as any tariff updates created by the Commission (e.g., suspensions, rejections, etc.). Subscribers may request that daily updates be forwarded on tape (either 9 track, 6250 bpi or 8 mm cartridge, Exabyte 8500 compatible) when the file size indicates that the on-line download option is not cost-effective. Subscriber responsibility and charges for use of this option are specified in § 514.21(j)(2). The Commission may also send selected daily updates by first class mail (or as directed by subscribers at subscriber's expense) or make updates available at the ATFI computer center when the magnitude of the file size indicates that downloads would degrade ATFI access for other ATFI user functions. The charge specified in § 514.21(j)(2) will apply, but subscribers will not be required to provide tapes. Subscribers requesting update data on tape are responsible for insuring that the Commission has received sufficient pre-paid monies before the last business day of the preceding month in order to subscribe to the next month's filings. The Commission will terminate the download capability of any accounts in arrears.

(e) *Instructional materials*—(1) *ATFI ''Batch Filing Guide'' and user manual.* The ATFI user guides applicable to retrieval functions are the ''ATFI Fundamentals Guide,'' ''ATFI System Handbook,'' and ''ATFI Tariff Retrieval Guide.'' See § 514.8(b). The user of subscriber tapes will also need the ATFI transaction set formats and specifications detailed in the ''Batch Filing Guide.'' See § 514.8(d)(3). The transaction set formats published for batch filers are used for the formatting of subscriber tapes.

(2) *Computer based instruction (''CBI'').* Computer based instruction for ATFI retrieval is a menu option for registered interactive retrievers using the ATFI central site system. See § 514.8(h).

(f) *Filers.* Properly registered individuals who will have ''write'' privileges for editing tariff data may access those tariffs for which they have such filing privileges without restriction. Where

filing firms or employees thereof also register as public retrievers for access to all tariff data, the restrictions in paragraph (c)(2) of this section shall apply when they enter ATFI as a retriever.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 30715, May 27, 1993; 60 FR 56123, Nov. 7, 1995]

§514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the user charges in this section are established for services under this part. Unless otherwise provided in this part, checks, drafts or money orders shall be remitted and made payable to ''Federal Maritime Commission (OBFM),'' 800 North Capitol Street, NW., Washington, DC 20573. Unless otherwise specified, overdue payments will be charged interest in accordance with the rate established by the Department of the Treasury for each 30-day period or portion thereof that the payment is overdue. In addition to any other remedy and penalty provided by law and regulation, if payment is overdue for 90 days, ATFI services will be denied:

(a) *Application for exemption* (See §§514.3 and 514.8(a)): As provided in §502.69 of this chapter.

(b) *User manual* (of ATFI ''Guides'' -- § 514.8(b)).

(1) *In diskette form*: $15 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) *Printed, in paper form* (Batch Filing Guide is free of charge and is furnished separately):

(i) *Package A*: Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii): $18.00.

(ii) *Package B*: Tariff Retrieval Guide: $15.00.

(iii) *Package C*: Tariff Filing Guide: $27.00.

(iv) *Package D*: All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii): $55.00.

(3) *Ordering manuals.* Requests for user manual package(s) should be in writing and addressed to ''BTCL Manuals,'' Federal Maritime Commission, Washington, DC 20573. A check for the appropriate amount should be made to the ''Federal Maritime Commission.''

(4) *Updates.* Updates to the user manual in any format will not be furnished automatically and are not included in the user charge. The Commission will publicize notice of upgrades when they occur.

(c) *Registration for user (filer and/or retriever ID and password* (see exhibit 1 to this part and §§514.4(d), 514.8(f) and 514.20)): $162 for initial registration for firm and one individual; $136 for additions and changes.

(d) *Certification by Commission Secretary* of tariff data (§514.8(k)(2)): As provided in §503.43(c) of this chapter.

(e) *Certification of batch filing capability (by appointment through the Bureau of Administration)* (§514.8(l)).

(1) *User charge:* $359 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

(2) *Certification submissions*:

(i) May be made in one or more scheduled certification periods;

(ii) May include transaction sets for one of each different tariff type listed in Appendix A (# 14) of the ATFI Batch Filing Guide; and

(iii) May be made to the ATFI central site computer via on-line batch or to the ATFI Computer Center via bulk batch (9-track tape), or both.

(f) *Application for special permission* (§514.18): $146.

(g) *Remote electronic retrieval* (§514.20(c)(3)). The fees for remote electronic access to ATFI electronic data are:

(1) A fee of 46 cents for each minute of remote computer access directly to the ATFI database by any individual; and

(2) Through September 30, 1995, for a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(h) *Printing* (screen prints) of downloaded tariff matter at Commission's Tariff Control Center

(§ 514.20(c)(4)): as provided in part 503, subpart E.

(i) *Tariff filing fee.* The fee for tariff filing in either the foreign or domestic offshore commerce of the United States shall be 17 cents per filing object; the fee for filing service contract essential terms shall be $1.65 per filing set.

(j) *Daily Subscriber Data (§ 514.20(d)).* (1) Persons requesting download of daily updates must pay 46 cents per minute as provided by § 514.21(g)(1).

(2) Persons requesting daily updates on tape must supply the tapes and return postage, and pay $43 per daily update.

(k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database described in paragraph (j) of this section, shall be $61 for the initial tape plus $25 for each additional tape required.

(l) *Exceptions.*

(1) Marine terminal tariff data are not subject to a secondary user charge for access under paragraphs (g)(2) or (m)(2) of this section.

(2) Subject to the secondary access restrictions and user fees under paragraph (m)(2) of this section:

(i) Filers may, without the necessity of paying a user fee under this section, access only those tariffs or parts of tariffs for which they have an authorized filer USERID and password.

(ii) A Federal agency is exempt from paying a fee under paragraphs (g) and (j) of this section.

(m) *Enforcement of section 502 of Public Law 102–582 (until September 30, 1995).* Through September 30, 1995, and in order to comply with section 502 of Public Law 102–582 (46 U.S.C. 1707a), official ATFI tariff data may be accessed by computer only as described in this paragraph:

(1) *Direct access.* (i) *Retrievers.* Any person may, with a proper retrieval USERID and password, enter the official ATFI database to obtain computer access of tariff matter, as provided in this part, but may download ATFI data only through the ''Print Screen'' function, which prints one screen at a time on paper. The user fee for this computer access is 46 cents a minute, for which the user will be billed at the end of each month.

(ii) *Filers.* Any person with a proper filer USERID and password may enter the official ATFI database to obtain computer access of tariff matter as provided in this part, but may download ATFI data only through the ''Print Screen'' function, which prints one screen at a time on paper, and the filer ATFI-mail-file-transfer function, which prints the contents of the filer's ATFI mail on paper.

(2) *Indirect access: purchase and use of database tapes.* (i)(A) Any person purchasing or subscribing to, or otherwise acquiring, ATFI database tapes under § 514.20(d) and this section shall first submit for approval to BTCL of the FMC a description and model of the accounting or charging system it intends to use to comply with this paragraph so that the FMC can determine whether such system is adequate. There shall be included in the application for approval detailed descriptions of:

(*1*) The methodology for, *inter alia,* monitoring, collecting, reporting and payment to the FMC of the secondary access fee for all indirect access of data, as prescribed by section 502 of Public Law 102–582 and this part;

(*2*) Features to protect the security of tariff data;

(*3*) How the applicant intends to categorize and handle ''mixed'' data, i.e., data which is, as well as data which is not, subject to the user fee.

(*4*) All the records which will be necessary to perform the functions set forth in paragraphs (m)(2)(i)(A)(*1*) through (m)(2)(i)(A)(*3*) of this section, to permit adequate evaluation of the reports submitted and computations used, and sufficient to reflect properly the charges to be collected and paid under this paragraph, including, specifically, all records of access granted, fees charged and collected for each secondary retriever, and remittances to FMC. These records, which must be retained for possible audit under paragraph (m)(2)(ii) of this section, shall include books, records, documents, and other evidence and accounting procedures and practices, regardless of form, e.g., machine readable media such as disk tape, or type, e.g., data bases, applications software, data base management software, utilities.

(B) Those parts of the charging system which the applicant wishes not to be disclosed to the public because they are considered business sensitive, e.g., ''trade secrets,'' shall be kept completely separate from the balance of the application, along with a full justification of their non-disclosability. The Commission will consider any request for these records under the Freedom of Information Act.

(C) The FMC will evaluate the charging system within sixty (60) calendar days after submission and approval will be assumed unless the FMC otherwise formally notifies the applicant within the sixty-day period.

(D) The database tapes of ATFI may not be made available to any person until its charging system is approved by FMC.

(ii)(A) Every person who is authorized to purchase ATFI database tapes under paragraph (m)(2)(i) of this section shall maintain those records described in paragraph (m)(2)(i)(A)(*4*) of this section until October 1, 1998.

(B) The FMC or its representatives shall have the right to examine and audit all records described in paragraphs (m)(2)(i)(A)(*4*) and (m)(2)(ii)(A) of this section, for the purpose of evaluating the accuracy and completeness of the reports required by this paragraph. The right of examination shall extend to all documents and other data, regardless of form, necessary to permit adequate evaluation of the reports submitted, along with the computations used.

(iii)(A) Any person having an ATFI database tape may access by computer the data contained therein for its own use, and/or may permit others to access by computer the data, but only if it records all such access and pays to the FMC the 46-cents-a-minute user charges for all computer access to such data, as prescribed in paragraph (g)(1)(ii) of this section under the approved charging system described in paragraph (m)(2)(i) of this section.

(B) The access of data on paper, e.g., that which has been printed or written on the paper, is not subject to the indirect (secondary) user fee under this paragraph, even if subsequently converted into computer, e.g., database, format.

(iv) No person having an ATFI database tape may allow downloading of the data contained therein other than by an effectively-designed and functioning ''Print-Screen'' function, which allows printing of one screen at a time onto paper.

(v) Billing and Payment.

(A) Within ten (10) calendar days after the end of each month, each database-tape purchaser under paragraph (m)(2)(i) of this section shall transmit to the Office of Budget and Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW. Washington, DC 20573–0001, a report of all computer access to ATFI data listed by user, date and minutes accessed. Each such purchaser shall simultaneously transmit payment to ''the Federal Maritime Commission'' for such usage at the rate of 46 cents per minute.

(B) If payment is not made when due, the database purchaser under paragraph (m)(2)(v)(A) of this section may be assessed interest, penalties and administrative costs associated with collection of late payments in accordance with the Federal Claims Collection Standards, 4 CFR 102.13. The FMC intends to utilize the provisions of the Debt Collection Act, 5 U.S.C. 5514, including disclosure to consumer reporting agencies, to ensure prompt payment.

(C) The FMC reserves the right to suspend or terminate furnishing ATFI data tapes to any person if payment is not timely made.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 30, Jan. 4, 1993; 58 FR 30715, May 27, 1993; 59 FR 59171, Nov. 16, 1994; 59 FR 63908, Dec. 12, 1994; 60 FR 56124, Nov. 7, 1995]

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

The information collection requirements contained in these regulations (46 CFR part 514 and Exhibit 1 to part 514) have been approved by the Office of Management and Budget [OMB] in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0055.

* OMB 3072-0055; Expires 9-30-94 *

Exhibit 1 to Part 514

ORG NO. _____

ATFI USER REGISTRATION FORM

PLEASE TYPE OR PRINT
(SEE INSTRUCTIONS)

FMC USE ONLY
ARC _____ BOND _____ CC _____

1. This Registration is: [ ] Initial [ ] Amendment (Specify change) _____

2. Registrant _____
Full Legal Name of firm (or individual, if not a firm)

_____
(Doing Business As)

3. Address of Home Office _____ ( ) _____
(Number and Street) Telephone

_____ ( ) _____
(Number and Street) Fax

_____
(City/State/Country)

4. Billing Address If Different _____ ( ) _____
(Number and Street) Telephone

_____ ( ) _____
(Number and Street) Fax

_____
(City/State/Country)

5. Organization Number (If known) _____ 6. SCAC/STAC CODE _____ (If Applicable)

7. Registrant Type (Check one) [ ] VOCC [ ] Terminal [ ] Tariff Publisher/Agent/Other
[ ] NVOCC [ ] Conference/Joint Service

[SEE INSTRUCTIONS BEFORE COMPLETING LINE 8]

8. Permissions Requested and Person granted these permissions (Check permissions that apply)

_____
Print Full Legal Name

[ ] Retrieval

[ ] Maintenance of organization record

[ ] Create/modify tariff data

[ ] Review/Authorize/Transmit data

9. Certified for Batch Filing (Y/N) _____ If Yes, show Certification date _____
If the person to perform the Batch filing already has an existing Login, list only the Login for that person.

Existing Login _____

_____
Signature of Authorized Official

_____
Print or Type name of Authorized Official

_____
Date

FMC USE ONLY
Login _____ Initial Password _____ User ID _____ Directory _____
DateAsg ____/____/____ AsgBy _____

Form FMC-63 (5-92)

Instructions for Exhibit 1 to Part 514
ATFI User Registration Form

Line 1. Registration. Indicate whether this is the initial (first-time) ATFI registration or an amendment to an existing ATFI registration.

Line 2. Registrant. This must be the full legal name of the firm or individual registering for ATFI and any trade names. The registrant name should match the corporate charter or business license, anti-rebate certification, surety bond, conference memberships, etc. It should be noted that the registrant name cannot be changed by the user after registration without submission of an amended registration form. A separate form must be submitted for each person registering to use ATFI.

Line 3. Address of Home Office. The complete street address should be shown in addition to the Post Office Box.

Line 4. Billing Address if Different. This should be completed when the billing address differs from the home office address. Show the street address in addition to the post office box.

Line 5. Organization Number. Complete if known. (This is also known as the Regulated Person Index number or RPI number).

Line 6. SCAC/STAC Code. SCAC (Standard Carrier Alpha Code) and STAC (Standard Tariffs Agent Code) is not mandatory for tariff filing in ATFI. These codes are used for the convenience of tariff filers/retrievers. SCAC/STAC codes are available from the National Motor Freight Traffic Association, Alexandria, VA.

Line 7. Registrant Type. Indicate the type of organization. A company cannot be more than one type. This data cannot be changed by the user after registration without submission of an amended registration form.

Line 8. Permissions Requested and Person Granted these Permissions.

Retrieval - Granted to all ATFI user(s).

Maintenance of Organization Record - The user listed can access the organization maintenance functions, i.e., modify organization information, assign publishers, affiliations, and doing-business-as (DBAs).

Create/Modify Tariff Data - The user is permitted to use the interactive system to enter tariff data.

Review/Authorize/Transmit Data (Interactive filing only) - The user may review previously entered, but not yet filed, tariff data. They may place data on a hold status, remove from the hold status, and may transmit data to ATFI.

Line 9. Certified for Batch Filing. The user is permitted to submit batch filings. The registrant must first be certified for batch filing as outlined in 46 CFR 514.8(l)(1) & (2). After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing login, the login (not the password) should be listed on the requesting form. Also, the certification date received from the Federal Maritime Commission should be listed on the requesting form.

** Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, FMC, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. **

Send completed form with appropriate user charge under 46 CFR 514.21 to BTCL, FMC, Washington, DC 20573.

BILLING CODE 6730-01-C

EXHIBIT II TO PART 514

Sample Abbreviated Format Service Contract

Service Contract No.: SC 1–95
FMC File No.: 50,000
Essentials Terms No.: ET 1–95
Amendment No.: _____
Service Contract Essential Terms Publication No.: 003
Tariff(s) of General Applicability No.: 001, 002
Carrier/Conference Name: Efficient Liner Transportation, Inc.
Carrier/Conference Address: 1227 Seaway Drive, Washington, DC 20573

and

Shipper Name: ABC Electronics Company
Shipper Address: 7221 Happiness Lane, New York, NY 10001

This is a service contract pursuant to the Shipping Act of 1984 (46 U.S.C. app. 1701 *et seq.*) and FMC rules at 46 CFR Part 514, between ''CARRIER/CONFERENCE'' and ''SHIPPER'' parties named herein. The contract parties certify that the terms set forth herein and the essential terms as published in Carrier/Conference Service Contract Essential Terms Tariff No. 003, ET No. 1–95, in the Federal Maritime Commission's Automated Tariff Filing and Information System, constitute the true and complete copy of all aspects of this contract and are hereby incorporated by reference.

Further, shipper party named herein certifies its status and that of any affiliate(s)/subsidiary(ies) named herein as (check appropriate box(es):

NVOCC _____
Shippers' Association _____
Owner of Cargo _____
Other (Please specify) _____

Records maintained to support shipments under this service contract are: bills of lading, shipping manifests, and other related written correspondence between contract parties.

Contact person for records in the event of a request by the Federal Maritime Commission: Efficient Liner Transportation, Inc., Traffic Manager, 1227 Seaway Drive, Washington, DC 20573, (202) 523–5856.

_____

(Carrier/Conference Signature)

_____

Date

Efficient Liner Transportation, Inc.

_____

(Shipper Signature)

_____

Date

ABC Electronics Company

Affiliate of shipper: Quality Compact Discs, Inc.

Affiliate's address: 7221–A Happiness Lane, New York, NY 10001

[61 FR 5311, Feb. 12, 1996; 61 FR 14979, Apr. 4, 1996]

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

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, escrow accounts, and self-insurance.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Denial, revocation, suspension, or modification.
540.9 Miscellaneous.
FORM FMC–131
FORM FMC–132A
FORM FMC–133A
APPENDIX A TO 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.
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540.22 Proof of financial responsibility, when required.
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FORM FMC–132B
FORM FMC–133B

Subpart C—General

540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358

(46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. 1716).

SOURCE: 49 FR 36313, Sept. 14, 1984, unless otherwise noted.

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

§540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this part may result in denial of an application for a certificate. Vessels operating without the proper certificate may be denied clearance and their owners may also be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817d and 817e).

§540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodation* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

(j) *Insurer* means any insurance company, underwriter, corporation, or association or underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(k) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(l) *Whole-ship charter* means an arrangement between a passenger vessel operator and a corporate or institutional entity:

(1) Which provides for the purchase of all the passenger accommodations on a vessel for a particular voyage or series of voyages; and

(2) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

[49 FR 36313, Sept. 14, 1984, as amended at 57 FR 41891, Sept. 14, 1992]

§ 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Public Law 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC–131 for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation. Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573, or at the Commission's offices at New York, NY; New Orleans, LA; San Francisco, CA; Miami, FL; Los Angeles, CA; Hato Rey, PR; and Chicago, IL.

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith except that any person other than the owner or charterer who arranges, offers, advertises, or provides passage on a vessel may apply for a Certificate (Performance). Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance) shall be accompanied by a filing fee remittance of $1,874.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the FEDERAL REGISTER.

[49 FR 36313, Sept. 14, 1984, as amended at 59 FR 59172, Nov. 16, 1994]

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, unless the applicant qualifies for consideration under § 540.5(e). The Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

(a) Filing with the Commission evidence of insurance, issued by an insurer, providing coverage for indemnification of passengers in the event of the nonperformance of water transportation.

(1) Termination or cancellation of the evidence of insurance, whether by

the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office, in Washington, DC 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (c) of this section.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in appendix A of subpart A of this part.

(c) Filing with the Commission a guaranty on Form FMC–133A, by a guarantor acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

(d) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. Such evidence must include an affidavit by the operator's Chief Executive Officer or other responsible corporate officer of a minimum of five years of operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation. In addition, applicant must demonstrate financial responsibility by maintenance of net worth in an amount calculated as in the introductory text of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of such net worth to which the applicant is bound. Evidence must be submitted that the net worth required above is physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus, except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) Semiannual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) Semiannual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list filed semiannually of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(e) The following schedule may be applied to determine the minimum coverage required for indemnification of passengers in the event of nonperformance of water transportation for those operators who have not elected to qualify by self-insurance; and can provide evidence (in the form of an affidavit by the operator's Chief Executive Officer or other responsible corporate officer) of a minimum of five years of operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation:

Unearned passenger revenue ("UPR")	Required coverage
$0–$5,000,000	100% of UPR up to $5,000,000.
$5,000,001–$15,000,000	$5,000,000 plus 50% of excess UPR over $5,000,000 subject to an overall maximum of $5,000,000 per vessel.
$15,000,001–$35,000,000	$10,000,000 plus 25% of excess of UPR over $15,000,000 subject to an overall maximum of $5,000,000 per vessel and a $15,000,000 overall maximum.
Over $35,000,000	$15,000,000 overall maximum.

(f) Revenues derived from whole-ship charters, as defined in § 540.2(l), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of the execution of the whole-ship charter if the operator has a Performance Certificate for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application; (2) The chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and (3) A document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89–777 may be affected by the reduction in section 3, Public Law 89–777, financial responsibility coverage attributable to the exclusion of such funds from the operator's UPR.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990; 57 FR 41891, Sept. 14, 1992; 57 FR 62480, Dec. 31, 1992]

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC–132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the gross passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given or a satisfactory bond has been provided, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate

financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§540.8 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§540.9 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC–132A), guaranty (Form FMC–133A), and application (Form FMC–131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the Certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail at its last known address on file with the Commission.

(f) [Reserved]

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to §540.8 (a) or (b).

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements

must cover every 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Performance), and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period. In addition, the statements will be due within 30 days after the close of every such 6-month period.

(i) [Reserved]

(j) The amount of: (1) Insurance as specified in §540.5(a), (2) the escrow account as specified in §540.5(b), (3) the guaranty as specified in §540.5(c), or (4) the surety bond as specified in §540.6, shall not be required to exceed 15 million dollars (U.S.).

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Public Law 89–777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 34568, Aug. 23, 1990]

FORM FMC–131

FEDERAL MARITIME COMMISSION

Washington, DC 20573

APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY

In compliance with the provisions of Public Law 89–777 and 46 CFR part 540, application is hereby made for a Certificate of Financial Responsibility (check one or both as applicable):

[ ] for indemnification of passengers for nonperformance. [ ] Initial application [ ] Certificate has previously been applied for (if so, give date of application and action taken thereon).

[ ] to meet liability incurred for death or injury to passengers or other persons. [ ] Initial application [ ] Certificate has previously been applied for (if so, give date of application and action taken thereon).

Instructions

Submit two (2) typed copies of the application to the Secretary, Federal Maritime Commission, Washington, DC 20573. The application is in four parts: Part I—General; Part II—Performance; Part III—Casualty and Part IV—Declaration. Applicants must answer all questions in part I and part IV, then parts II and/or part III as appropriate. Instructions relating to part II and part III are contained at the beginning of the respective part. If the information required to be submitted under 46 CFR part 540 has been previously submitted under other rules and regulations of the Commission, state when and for what reason such information was submitted. If previously submitted, it is not necessary to resubmit. If additional space is required, supplementary sheets may be attached.

PART I—GENERAL

Answer All Questions

1. (a) Legal business name:

(b) English equivalent of legal name if customarily written in language other than English:

(c) Trade name or names used:

2. (a) State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust, or other organized group of persons (whether incorporated or not), or as a receiver, trustee, or other liquidating agent, and describe current business activities and length of time engaged therein.

(b) If a corporation, association, joint stock company, business trust, or other organization, give:

Name of State or country in which incorporated or organized.

Date of the incorporation or organization.

(c) If a partnership, give name and address of each partner:

3. Give following information regarding any person or company controlling, controlled by, or under common control with you (answer only if applying as a self-insurer under part II or part III).

Name	Address	Business and relationship to you
.....	.....	
.....	.....	

4. In relation to the passenger transportation engaged in by you to or from U.S. ports:

Do you own all the vessels? [ ] Yes [ ] No (If ''No'' indicate the nature of the arrangements under which those not owned by you are available to you (e.g., bareboat, time, voyage, or other charter, or arrangement).)

5. Name of each passenger vessel having accommodations for 50 or more passengers and embarking passengers at U.S. ports:

Name	Country of registry	Registration No.	Maximum number of berth or stateroom accommodations
.....	.....	.....	
.....	.....	.....	

6. Submit a copy of passenger ticket or other contract evidencing the sale of passenger transportation.

7. Name and address of applicant's U.S. agent or other person authorized to accept legal service in the United States.

PART II—PERFORMANCE

Answer items 8–15 if applying for Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance. If you are filing evidence of insurance, escrow account, guaranty or surety bond under subpart A of 46 CFR part 540 and providing at least fifteen (15) million dollars (U.S.) of coverage, you need not answer questions 10–15.

8. If you are providing at least fifteen (15) million dollars (U.S.) of coverage, state type of evidence and name and address of applicant's insurer, escrow agent, guarantor or surety (as appropriate).

9.* A Certificate (Performance) is desired for the following proposed passenger voyage or voyages: (Give itinerary and indicate whether the Certificate is for a single voyage, multiple voyages or all voyages scheduled annually.)

Vessel	Voyage date	Voyage itinerary
.....	.....	
.....	.....	

10. Items 11–15 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

[ ] Insurance (item 11).
[ ] Escrow (item 12).
[ ] Surety bond (item 13).
[ ] Guaranty (item 14).
[ ] Self-insurer (item 15).

11. (a) Total amount of performance insurance which is to be computed in accordance with 46 CFR 540.5. (Evidence of insurance must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which insurance amount is determined (attach data substantiating that amount is not less than that prescribed in 46 CFR 540.5).

(c) Name and address of applicant's insurer for performance policy.

12. (a) Name and address of applicant's escrow agent. (Applicant may pledge cash or U.S. Government securities, in lieu of a surety bond, to fulfill the indemnification provisions of Pub. L. 89–777.)

(b) Total escrow deposit which is to be computed in accordance with 46 CFR 540.5. (Escrow agreement must be filed with the Federal Maritime Commission before a Certificate (Performance) will be issued.) Cash $———. U.S. Government Securities $———.

(c) Method by which escrow amount is determined (attach data substantiating that amount is not less than that prescribed by 46 CFR 540.5).

13. (a) Total amount of surety bond in accordance with 46 CFR 540.6. (The bond must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which bond amount is determined (attach data substantiating that amount is not less than that prescribed in 46 CFR 540.6).

(c) Name and address of applicant's surety on performance bond.

14. (a) Total amount of guaranty which is to be computed in accordance with 46 CFR 540.5. (Guaranty must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which guaranty amount is determined (attach data substantiating that amount is not less than that prescribed in 46 CFR 540.5).

(c) Name and address of applicant's guarantor.

15. If applicant intends to qualify as a self-insurer for a Certificate (Performance) under 46 CFR 540.5, attach all data, statements, and documentation required therein.

PART III—CASUALTY

Answer Items 16–22 if Applying for Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons

16. (a) Name of passenger vessel subject to section 2 of Public Law 89–777 operated by you to or from U.S. ports which has largest

*The filing of sailing schedules will be acceptable in answers to this question.

number of berth or stateroom accommodations.

(b) State the maximum number of berth or stateroom accommodations.

17. Amount of death or injury liability coverage based on number of accommodations aboard vessel named in item 16 above, calculated in accordance with 46 CFR 540.24.

Items 18–22 Are Optional Methods: Answer Only the One Item Which is Applicable to This Application

18. (a) Total amount of applicant's insurance. (Evidence of the insurance must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's insurer.

19. (a) Total amount of surety bond. (Bond must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's surety for death or injury bond.

20. (a) Total amount of escrow deposit. (Escrow agreement must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's escrow agent.

21. (a) Total amount of guaranty. (Guaranty must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's guarantor.

22. If applicant intends to qualify as a self-insurer for a Certificate (Casualty) under 46 CFR 540.24(c), attach all data, statements and documentation required therein.

PART IV—DECLARATION

This application is submitted by or on behalf of

(a) Name.

(b) Name and title of official.

(c) Home office— Street and number.

(d) City.

(e) State or country.

(f) ZIP Code.

(g) Principal office in the United States—Street and number.

(h) City.

(i) State.

I declare that I have examined this application, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

By _____

(Signature of official)

_____

(Date)

Comments:

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 34568, Aug. 23, 1990]

FORM FMC–132A

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____
FMC Certificate No. _____

PASSENGER VESSEL SURETY BOND (46 CFR PART 540)

Know all men by these presents, that we _____ (Name of applicant), of _____ (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of subpart A of part 540 of title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility and the supplying transportation and other services subject to subpart A of part 540 of title 46, Code of Federal Regulations, in accordance with the ticket contract between the Principal and the passenger, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to subpart A of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services in accordance with the ticket contract made by the Principal and the passenger while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of subpart A of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the passage price paid by or on behalf of such passenger.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ———, 19—, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds due under ticket contracts made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds arising from ticket contracts made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on —— day of ———, 19—.

PRINCIPAL

Name ———————————————

By ———————————————

(Signature and title)

Witness ———————————————

SURETY

[SEAL] Name ———————————————

By ———————————————

(Signature and title)

Witness ———————————————

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

FORM FMC–133A

FEDERAL MARITIME COMMISSION

Guaranty No. ———

FMC Certificate No. ———

GUARANTY IN RESPECT OF LIABILITY FOR NONPERFORMANCE, SECTION 3 OF THE ACT

1. Whereas ————— (Name of applicant) (Hereinafter referred to as the ''Applicant'') is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule (''the Vessels''), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89–777, 89th Congress, approved November 6, 1966 (''the Act'') then, provided that the Federal Maritime Commission (''FMC'') shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) (''Certificate''), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $———.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including

telex or cable) that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from ticket contracts made by the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, subpart A of part 540 of title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358), entitled ''Security for the Protection of the Public.''

_____

(Place and Date of Execution)

_____

(Type Name of Guarantor)

_____

(Type Address of Guarantor)

By _____

(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

APPENDIX A—EXAMPLE OF ESCROW AGREEMENT FOR USE UNDER 46 CFR 540.5(b)

Escrow Agreement

1. Legal name(s), state(s) of incorporation, description of business(es), trade name(s) if any, and domicile(s) of each party.

2. Whereas, [name of the passenger vessel operator] (''Operator'') and/or [name of the issuer of the passenger ticket] (''Ticket Issuer'') wish(es) to establish an escrow account to provide for the indemnification of certain of its passengers utilizing [name vessel(s)] in the event of nonperformance of transportation to which such passengers would be entitled, and to establish the Operator's and/or Ticket Issuer's financial responsibility therefor; and

3. Whereas, [name of escrow agent] (''the Escrow Agent'') wishes to act as the escrow agent of the escrow account established hereunder.

4. The Operator and/or Ticket Issuer will determine, as of the day prior to the opening date, the total amounts of U.S. unearned passenger revenues (''UPR'') which it had in its possession. Unearned passenger revenues are defined as [incorporate the elements of 46 CFR 540.2(i)].

5. The Operator and/or Ticket Issuer shall on the opening date deposit an amount equal to UPR as determined above, plus a cash amount equal to [amount equal to no less than 10% of the Operator's and/or Ticket Issuer's UPR on the date within the 2 fiscal years immediately prior to the filing of the escrow agreement which reflects the greatest amount of UPR, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement or other methods acceptable to the Commission to determine the amount of coverage required] (''initial deposit'').

6. The Operator and/or Ticket Issuer may at any time deposit additional funds into the account.

7. The Operator and/or Ticket Issuer shall, at the end of each business week, recompute UPR by first computing:

A. the amount by which UPR has decreased due to: (1) Refunds due to cancellations; (2) amount of cancellation fees assessed in connection with (1) above; and (3) the amount earned from completed cruises; and

B. the amount by which UPR has increased due to receipts from passengers for future water transportation and all other related accommodations and services not yet performed.

The difference between the above amounts is the amount by which UPR has increased or decreased (''new UPR''). If the new UPR plus the amount of the initial deposit exceeds the amount in the escrow account, the Operator and/or Ticket Issuer shall deposit the funds necessary to make the account balance equal to UPR plus the initial deposit. If the account balance exceeds new UPR plus the initial deposit, the balance shall be available to the Operator and/or Ticket Issuer. The information computed in paragraph 7 shall be furnished to the Commission and the Escrow Agent in the form of a recomputation certificate signed and certified by a competent officer of the Operator and/or Ticket Issuer. Copies sent to the Commission are to be addressed to the Director, Bureau

of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

8. A monthly report shall be prepared by the Escrow Agent and provided to the Operator and/or Ticket Issuer and the Commission within 15 days of the end of each month and shall list the investment assets of the account, their original cost, their current market value, and the beginning and ending balance of the account.

9. The Operator's and/or Ticket Issuer's independent auditors shall prepare quarterly reports, such reports to be furnished to the Escrow Agent and the Commission, and any shortfall is to be covered within one business day.

10. The Escrow Agent shall invest the funds of the account in qualified investments as directed by the Operator and/or Ticket Issuer. Some examples of qualified investments are, to the extent permitted by law:

(a) Government obligations of the United States or its agencies;

(b) Certificates of deposit, time deposits or acceptances of any bank, savings institution or trust company whose debt obligations are in the two highest categories rated by Standard and Poor's or Moody's, or which is itself rated in the two highest categories by Keefe, Bryette and Woods;

(c) Commercial paper similarly rated;

(d) Certificates or time deposits issued by any bank, savings institution or trust company when fully insured by the FDIC or the FSLIC;

(e) Money market funds utilizing securities of the same quality as above; and/or

(f) Corporate bonds of the three highest categories, as rated by Standard and Poor's or Moody's.

11. Income derived from the investments shall be credited to the escrow account.

12. The purpose of the escrow agreement is to establish the financial responsibility of the Operator and/or Ticket Issuer pursuant to section 3 of Public Law 89–777, approved November 5, 1966, and the account is to be utilized to discharge the Operator's and/or Ticket Issuer's legal liability to indemnify passengers for nonperformance of transportation via the [name of vessel(s)]. The Escrow Agent is to make such payments on instructions from the Operator and/or Ticket Issuer, or, in the absence of such instructions, 21 says after final judgment against the Operator and/or Ticket Issuer in a U.S. Federal or State court having jurisdiction. The Operator and/or Ticket Issuer will pledge to each passenger holding a ticket for future passage on the Operator's/Ticket Issuer's vessel(s) an interest in the Escrow Account equal to the Fares amount shown on the face of such ticket. The Escrow Agent agrees to act as nominee for each passenger until transportation is performed or until passenger has been compensated.

13. Escrow Agent shall waive right to offset.

14. The Operator and/or Ticket Issuer will indemnify and hold Escrow Agent harmless.

15. Statement of the parties' agreement concerning warranty of *bona fides* by the Operator and/or Ticket Issuer and Escrow Agent.

16. Statement of the parties' agreement concerning fees to be paid by the Operator and/or Ticket Issuer to Escrow Agent, reimbursable expenses to be paid by the Operator and/or Ticket Issuer to Escrow Agent. A statement that fees for subsequent terms of agreement are to be negotiated.

17. Statement of the parties' agreement concerning the term of agreement and renewal/termination procedures.

18. Statement of the parties' agreement concerning procedures for appointment of successor Escrow Agent.

19. Statement that disposition of funds on termination shall be to the Operator and/or Ticket Issuer, if evidence of the Commission's acceptance of alternative evidence of financial responsibility is furnished; otherwise, all passage fares held for uncompleted voyages are to be returned to the passengers. The Operator and/or Ticket Issuer shall pay all fees previously earned to the Escrow Agent.

20. The agreement may be enforced by the passengers, the Escrow Agent, the Operator and/or Ticket Issuer or by the Federal Maritime Commission.

21. All assets maintained under the escrow agreement shall be physically located in the United Sates and may not be transferred, sold, assigned, encumbered, etc., except as provided in the agreement.

22. The Commission has the right to examine the books and records of the Operator and/or Ticket Issuer and the Escrow Agent, as related to the escrow account, and the agreement may not be modified unless agreed in writing by the Operator and/or Ticket Issuer and Escrow Agent and approved in writing by the Commission.

[57 FR 41891, Sept. 14, 1992]

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.

The regulations contained in this subpart set forth the procedures whereby owners or charterers of vessels having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

§ 540.21 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, *passengers embarking at United States ports* means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

§ 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the owner or charterer of such vessel.

§ 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an Application on Form FMC–131 for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages. Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573, or at the Commission's offices at New York, NY; New Orleans, LA; San Francisco, CA; Miami, FL; Los Angeles, CA; Hato Rey, PR; and Chicago, IL.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the

Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty) shall be accompanied by a filing fee remittance of $830.

(c) The application shall be signed by a duly authorized officer or represenative of the applicant with a copy of evidence of his authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the FEDERAL REGISTER.

[49 FR 36313, Sept. 14, 1984, as amended at 59 FR 59172, Nov. 16, 1994]

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

Twenty thousand dollars for each passenger accommodation up to and including 500; plus

Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus

Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus

Five thousand dollars for each passenger accommodation in excess of 1,500;

Except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office in Washington, DC 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commissioner, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC–132B issued by a bonding company authorized to do

business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress. The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC–133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section. The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

§ 540.26 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission

shall advise the applicant of its intention to deny, revoke, suspend, or modify, and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Casualty) shall become null and void upon cancellation or termination of evidence of insurance, surety bond, guaranty, or escrow account.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§540.27 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC–132B), guaranty (Form FMC–133B), and application (Form FMC–131 as set forth in subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail, at its last known address on file with the Commission.

(f) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Secretary of the Commission evidence of any such arrangement.

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to §540.26(a) or §540.26(b).

(h) Every person who has been issued a Certificate (Casualty) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every such 6-month period commencing with the first 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Casualty). In addition,

the statements will be due within 30 days after the close of every 6-month period.

FORM FMC–132B

(5–67)

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. ————
FMC Certificate No. ————

PASSENGER VESSEL SURETY BOND (46 CFR PART 540)

Know all men by these presents, that We ———— (Name of applicant), of ———— (City), ———— (State and country), as Principal (hereinafter called Principal), and ———— (Name of surety), a company created and existing under the laws of ———— (State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of ————, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to subpart B of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall in no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Pub. L. 89–777, then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ————, 19—, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the —— day of ————, 19—.

PRINCIPAL

Name ————————————
By ————————————
(Signature and title)
Witness ————————————

SURETY

Name ————————————
By [SEAL] ————————————
(Signature and title)
Witness ————————————

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

FORM FMC–133B

(5–67)

FEDERAL MARITIME COMMISSION

Guaranty No. ————————————

FMC Certificate No. _____

GUARANTY IN RESPECT OF LIABILITY FOR DEATH OR INJURY, SECTION 2 OF THE ACT

1. Whereas _____ (Name of Applicant) (Hereinafter referred to as the ''Applicant'') is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule (''the Vessels''), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Public Law 89–777, 89th Congress, approved November 6, 1966 (''the Act'') then, provided that the Federal Maritime Commission (''FMC'') shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) (''Certificate''), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, subpart B of part 540 of title 46, Code of Federal Regulations, issued under section 2 of the Pub. L 89–777 (80 Stat. 1357, 1358), entitled ''Security for the Protection of the Public.''

_____
(Place and Date of Execution)

_____
(Name and Guarantor)

_____
(Address of Guarantor)

By _____
(Name and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Subpart C—General

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

This section displays the control numbers 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 1980, Public Law 96–511. The Commission intends

that this section comply with the requirements of section 3507(f) 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:

Section	Current OMB Control No.
540.4 (Form FMC–131)	3072–0012
540.5	3072–0011
540.6	3072–0011
540.8	3072–0011
540.9	3072–0011
540.23 (Form FMC–131)	3072–0012
540.24	3072–0011
540.26	3072–0011
540.27	3072–0011

SUBCHAPTER C—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES IN DOMESTIC OFFSHORE COMMERCE

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

Sec.
552.1 Purpose.
552.2 General requirements and fees.
552.3 Certification.
552.4 Access to and audit of records.
552.5 Definitions.
552.6 Forms.
552.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a, and 847.

SOURCE: 49 FR 38850, Oct. 1, 1984, unless otherwise noted.

§552.1 Purpose.

(a) The purpose of this part is to establish methodologies that the Federal Maritime Commission will utilize in evaluating the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers (VOCCs) subject to the provisions of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a) and 847) and to provide for the orderly acquisition of data essential to this evaluation. Compliance is mandatory and failure to file the reports required under this part may result in denial of rate increases or rejection of tariff line items implementing rate changes or penalties of up to $100 for each day of such default (46 U.S.C. app. 820(a)).

(b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in §552.6(f) in order to achieve a fair and reasonable result.

(c) In evaluating the reasonableness of a carrier's rates, the Commission may consider, in addition to the rate of return of the filing carrier, the effect which approval or disapproval of the rates will have on other carriers in the Trade.

[59 FR 954, Jan. 7, 1994, as amended at 60 FR 27230, May 23, 1995; 60 FR 46058, Sept. 5, 1995]

§552.2 General requirements and fees.

(a) All persons engaged in common carriage via cargo vessels in the domestic offshore trades (except persons engaged in intrastate operations in Alaska and Hawaii) and required by the Intercoastal Shipping Act, 1933, to file tariffs with the Commission, shall execute and file, in duplicate, State of Financial and Operating Data (designated as FMC Form No. 377 for tug and barge operators and FMC Form No. 378 for vessel operators) for each domestic offshore trade served, with:

Federal Maritime Commission, Bureau of Economics and Agreement Analysis, 800 North Capitol Street, NW, Washington, DC 20573–0001.

(b) Annual statements under this part shall consist of Exhibits A, B, and C, as described in §552.6, and shall be filed within 150 days after the close of the carrier's fiscal year and be accompanied by a company-wide balance sheet and income statement having a time period coinciding with that of the annual statements. A specific format is not prescribed for the company-wide statements.

(c)(1) Upon application, the Commission may grant reasonable extensions of the time limit prescribed by this section for filing the statements required by this part, provided that:

(i) The application for extension is received at least 15 days before the statements are due; and

(ii) The application states a specific date on or before which the required statements will be filed.

(2) The mere filing of an application for an extension will not necessarily act as a bar to the imposition of civil penalties for failure to comply with Commission regulations. Even in cases where extensions are granted, the Commission may suspend and investigate rates filed during the extension period.

(3) Applications shall be accompanied by remittance of a $55 filing fee.

(d) Upon application, the Commission may relieve a carrier from full compliance with this part and permit it to submit alternative data as the Commission deems acceptable, provided that:

(1) The application shows good cause and is accompanied by the data which the carrier proposes to submit in lieu of the required statements, or a description of that data; and

(2) The Commission finds compliance with this part unnecessary to fulfill its regulatory functions.

(3) Applications shall be accompanied by remittance of a $165 filing fee.

(e) Upon application, the Commission shall grant a waiver of the detailed reporting requirements to carriers which have earned gross revenues of $25 million or less for the reporting period in a particular Trade. The application for waiver (exhibit D) must be accompanied by a company-wide balance sheet and income statement. This waiver provision is applicable to annual reporting requirements and to filings of proposed rate changes in accordance with § 552.2(f). Applications shall be accompanied by remittance of a $103 filing fee.

(f) Whenever a carrier files with the Commission an increase in rates which would affect 50 percent or more of the rate items listed in all of its tariffs in a particular Trade, and which increase in rates would result in either: an increase of not less than 3 percent in the carrier's gross revenues in that Trade, or in an increase of less than 3 percent in the carrier's gross revenues in that Trade, but, when aggregated with other rate changes filed during the preceding twelve months which have also resulted in increases of less than 3 percent in the carrier's gross revenues in that Trade, would result in an increase of 9 percent or more in the carrier's gross revenues in that Trade, then such carrier shall simultaneously file in duplicate:

(1) Financial and operating data in support of proposed rate changes as follows:

(i) An *actual* midyear rate base exhibit (Exhibit A–a) and supporting schedules computed for a 12–month period commencing not more than fifteen (15) months prior to the date of filing the proposed rates;

(ii) A *projected* midyear rate base exhibit (Exhibit A–p) and supporting schedules computed for a 12–month period commencing on the first day of the month following the date on which the rate changes are proposed to become effective;

(iii) An *actual* income account exhibit (Exhibit B–a) and supporting schedules covering the 12-month period used to calculate rate base in paragraph (f)(1)(i) of this section;

(iv) A *projected* income account exhibit (Exhibit B–p) and supporting schedules for the 12-month period commencing on the first day of the month following the date on which the changed rates are proposed to become effective (taking into account the effect of the proposed rate changes);

(v) *Actual* and *projected* rate-of-return exhibits (Exhibits C–a and C–p) coinciding with the time periods covered by the income statements furnished in response to paragraphs (f)(1) (iii) and (iv) of this section; and

(vi) Projected schedules for capitalization amounts and ratios (Schedule F–I); cost of long-term debt capital calculation (Schedules F–II and F–III); cost of preferred (and preference) stock capital calculation (Schedules F–IV and F–V); corporate income tax rate (Schedule F–VI); and flotation costs (Schedule F–VII) for the 12-month period used to compute projected midyear rate base in paragraph (f)(1)(ii) of this section.

(2) The work papers described in § 552.4.

(3) The filing of proposed rate changes described in this paragraph shall be accompanied by remittance of a $11,951 filing fee.

(g) If a carrier files proposed rate changes within six (6) months after the end of its fiscal year, it may furnish its annual report under this part for the fiscal year in lieu of the schedules of actual data required in paragraphs (f)(1) (i) and (iii) of this section. The requirement to furnish schedules pertaining to future operations under the proposed rate changes would not be affected by this substitution.

(h) When a proposed rate change is filed which does not meet the criteria set forth in § 552.2(f), the following certification shall be submitted simultaneously with the tariff material:

Certification

I, [type or print name of officer] of [name of reporting company] certify, under the penalties of 18 U.S.C. 1001, that the proposed rate increase submitted herewith is not required by § 552.2(f) of 46 CFR part 552 to be accompanied by the financial and operating data described therein.

Signature: _____
Title: _____
Date: _____

(i) All financial and operating data filed in connection with proposed rate changes shall be made available to interested persons by the carrier upon request.

(j) Where it is necessary to allocate property, revenue (except *Net Passenger* and *Other Voyage* revenue), costs or expenses, the allocation shall be on a direct basis. If this is not practicable, allocation shall be made in the manner prescribed in § 552.6. However, if the gross revenue from *Other Services* does not exceed 5 percent of the total company gross revenue, no allocation of revenue and expense between *Other Services* and the *Service* (see definitions, paragraphs (a) and (b) of § 552.5) is required by this part. Further, if the gross revenue from *Other Cargo* does not exceed 5 percent of the total gross revenue from the *Service*, no allocation of revenue and expense between *Other Cargo* and *The Trade* (see definitions, paragraphs (c) and (e) of § 552.5) is required.

(k) All carriers subject to these filing requirements must comply fully with the instructions outlined in this part for the submission of specified data and with the methods prescribed for its preparation. A carrier may request relief from full compliance in accordance with the provisions of paragraphs (d) and (e) of § 552.2. If a carrier has no information to report on a required schedule, it must submit a blank schedule with the word ''NONE'' printed across its face.

(l) With respect to the annual statements required by this part, all data shown must conform or be reconciled to the figures listed in the balance sheet and income statement filed therewith.

(m) All percentage calculations required by allocations herein shall be carried to two places beyond the decimal point (e.g., 97.54 percent).

(n) Whenever a carrier files an initial tariff, it shall simultaneously file a company-wide balance sheet and income statement together with the data required in Exhibit E. If a carrier is operating in another domestic offshore trade and has already filed the requisite annual data, only the data set forth in Exhibit E will be required.

(o) For the purpose of all reports required under this part, a carrier may employ terminated voyage or period accounting, at its election, and shall identify the method utilized. A carrier may change accounting methods for the purpose of such reports only with the prior written consent of the Commission.

(p) Related company assets employed in the Service shall be reported in the same manner as owned assets. Other intercompany transactions shall be shown net of intercompany profit and reported on the appropriate schedule. Any calculations involving intercompany accounts shall be included in the working papers.

[49 FR 38850, Oct. 1, 1984, as amended at 58 FR 13417, Mar. 11, 1993; 59 FR 63908, Dec. 12, 1994; 59 FR 67230, Dec. 29, 1994; 60 FR 46058, Sept. 5, 1995]

§ 552.3 Certification.

The data required by this part shall be accompanied by a certification by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier, stating that:

(a) The books of account have been maintained in accordance with an appropriate system of accounts;

(b) The exhibits and schedules have been prepared from the regularly maintained books and records of the carrier;

(c) The records so maintained conform to, are reconciled to, or represent the actual financial data subject to the annual independent financial audit;

(d) The allocations have been made in accordance with the rules promulgated in this part; and,

(e) The financial and statistical data used are supported by an appropriate information gathering system having proper internal controls which have been tested for accuracy.

§ 552.4 Access to and audit of records.

(a) The carrier shall file with the Commission all work papers, properly cross-referenced and indexed, which were prepared in support of the exhibits and schedules. In addition, the books and records of the carrier and any related company whose financial data is included in any of the exhibits or schedules shall be made available for examination upon request by appropriate Commission personnel. Commission personnel shall be permitted to make copies of these records to the extent they deem necessary.

(b) For all proposed rate changes as described in § 552.2(f), the carrier shall submit a detailed description of the methods employed in projecting revenues.

(c) All information obtained by the Commission pursuant to the provisions of this part shall be withheld from public disclosure and shall be treated as confidential information in the files of the Commission; except that any confidential information derived from an audit may be utilized by the Commission as the basis for a formal proceeding instituted pursuant to section 22 of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and may also be utilized in such a proceeding.

[49 FR 38850, Oct. 1, 1984, as amended at 50 FR 32068, Aug. 8, 1985; 57 FR 44700, Sept. 29, 1992]

§ 552.5 Definitions.

For the purpose of this part, the following terms are expressly limited to the definitions listed below:

(a) *Voyage* means a completed round trip from port of origin and return to port of origin. A voyage cannot be split to separately reflect outbound and inbound services. However, when a vessel is reassigned to a new United States basing point, then the voyage runs from the old United States port of origin to the new United States port of origin. Should a vessel sail outbound in the Service and then proceed to another service, the voyage will be considered to be terminated upon completion of the offloading of the last cargo in the Service. Carriers which are party to operating differential subsidy contracts may use Maritime Administration commencement and termination guidelines for the purposes of this part.

(1) Voyages generally are considered to be terminated on the completion of the latest occurring event of one of the following:

(i) Crew paid off;

(ii) Discharge of last inbound cargo;

(iii) Completion of repairs (excluding annual overhaul and emergency repairs); or

(iv) Midpoint in time of operations in which cargo is simultaneously on-loaded and off-loaded.

(2) Usually voyage termination will be considered to have happened at noon or midnight of the day on which the determining operation is completed. If a carrier has difficulty in applying this definition of the word *voyage* to its operations, it may identify the method it uses to determine a voyage and explain the reasons for this alternative definition for the Commission's consideration and approval.

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under 46 CFR 514.1(c)(2) is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under 46 CFR 514.1(c)(2), more extensively defined below under Domestic Offshore Trade.

(d) *Other services* means thise voyages or terminal facilities other than those of the relevant Service (e.g., a voyage to a foreign port on which no regulated cargo was carried, or a terminal facility in a foreign country).

(e) *Other cargo* means that part of the Service not included in the Trade.

(f) *Domestic offshore trade* means the carriage of common carrier cargo under the terms of a tariff(s) on file with and regulated by the Commission between any one of the five areas of the Continental United States listed in paragraph (f)(1) of this section and one non-contiguous area of the United States (see paragraph (f)(2) of this section), or between two non-contiguous

areas of the United States. Where service is offered to or from two or more areas at the same rates (e.g., Atlantic Coast to Puerto Rico and the Virgin Islands) and listed as such in a single tariff, the carriage of cargo to or from those two or more areas may be treated as one domestic offshore trade for the purposes of this part.

(1) The five areas of the Continental United States are:

(i) North Atlantic (Maine to, but not including, Hatteras, North Carolina);

(ii) South Atlantic (Hatteras, North Carolina to, but not including, Key West, Florida);

(iii) Gulf (Key West, Florida to and including Brownsville, Texas);

(iv) West Coast; and

(v) Great Lakes.

(2) The non-contiguous areas of the United States (including, but not limited to those) to which service is offered under the terms of tariffs on file with the Commission, are:

(i) American Samoa;

(ii) Northern Marianas;

(iii) Guam;

(iv) Johnston Island;

(v) Midway Island;

(vi) Alaska;

(vii) Hawaii;

(viii) Puerto Rico;

(ix) U.S. Virgin Islands; and

(x) Wake Island.

(g) *Cargo vessel* means a self-propelled or non-self-propelled vessel which transports cargo, but not including vessels which are authorized to carry more than 12 passengers.

(h) *Cargo cube* means the product of the outside dimensions of a unit of cargo expressed in cubic feet. In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used. The height of equipment moving on wheels shall be measured from the ground to the highest point on the equipment. Empty equipment, such as containers, shall be included in the computation of cargo cube only if it is a revenue-producing unit of cargo. Where an operator finds it more convenient to accumulate such data in terms of twenty-foot equivalent units (TEU's) or metric quantities, these units may be used instead of cargo cube in all instances where cargo cube is cited in this part. Where any of these options are exercised, the operator shall modify the headings on the prescribed reporting forms to indicate the units in which the data is being reported and shall convert the data to TEU's where so provided in the schedules. For purposes of this part, carriers are not required to tape measure each unit (e.g., container, trailer, box, carton). However, the computation of cargo cube must be based upon careful consideration of all evidence available to the carrier, including documents, the opinions of experienced operating personnel, and sample measurements. In calculating the cube of containers, trailers, or other similar equipment, the carrier may assign a standard length, width and height to a given class of equipment, provided that the actual dimensions of each piece of equipment in the class vary no more than a foot from the standard dimensions adopted.

(i) *Measurement ton*—Equals forty (40) cubic feet.

(j) *Metric measurement ton*—Equals 35.31 cubic feet or 1 cubic meter.

(k) *Twenty-foot equivalent unit (TEU)*—Equals 1,280 cubic feet, based on the standard 20′ x 8′ x 8′ container.

(l) *Cargo cube relationship* means the ratio of total cargo cube for all cargo carried in the Trade to total cargo cube for all cargo carried in the Service.

(m) *Cargo cube miles* means the product of the cargo cube carried between each port of origin and destination, multiplied by the number of nautical miles representing the shortest navigable distance between the two ports as set forth in *Distance Between Ports* (Department of the Navy, Oceanographic Office), *Distance Between United States Ports* (U.S. Department of Commerce, Coast and Geodetic Survey) or, if not listed in either of these publications, as approved by the Commission. Where revenue derived from the carriage of passengers and Other Services is treated as a reduction of costs under § 552.6(c)(2)(iii), the cargo cube, if any, from which such revenue is derived shall be omitted from the cargo-cube mile calculations required herein.

(n) *Cargo-cube mile relationship* means the ratio of cargo-cube miles for all cargo carried in the Trade to total

cargo-cube miles for all cargo carried in the Service. Because the total of all cargo-cube miles will normally involve a figure of considerable magnitude, the data shall be submitted in terms of thousands of cargo-cube miles. Where the service of the carrier is solely between port pairs in the Trade, and where there are no significant mileage differences between all such port pairs and the ocean rates between all such port pairs are identical, the cargo-cube relationship may be used in lieu of the cargo-cube mile relationship.

(o) *Voyage expense* means:

(1) For carriers required to file Form FMC–378: the total of Vessel Operating, Vessel Port Call and Cargo Handling Expenses less Other Shipping Operations Revenue.

(2) For carriers required to file Form FMC–377: the total of Transportation, Terminal and Traffic Expenses.

(p) *Voyage expense relationship* means the ratio of total Trade Voyage Expense to total Company Voyage Expense.

(q) *Related companies* means companies or persons that directly or indirectly (through one or more intermediaries) control, or are controlled by, or are under common control with, the reporting carrier. The term *control* shall include actual as well as legal control, whether maintained or exercised through (or by reason of) the circumstances surrounding organizational structure or operation, through (or by) common directors, officers, stockholders, voting trust(s), holding or investment company or companies, or through (or by) any other direct or indirect means, including the power to exercise control.

(r) *Initial tariff* means the first filing of a tariff by a carrier in a specific domestic offshore trade, or the filing of a tariff in a Trade where the carrier does not have an active tariff.

(s) *Trade operating expense* means the total of all expenses shown on Exhibit B (Income Account), including Federal income taxes.

(t) *Company operating expense* means the total of all expenses shown on the company-wide income statement, including Federal income taxes.

(u) *Operating expense relationship* means the ratio of Trade Operating Expense to total Company Operating Expense.

(v) *Book value* means the value at which an asset is carried on a balance sheet.

(w) *Capital structure* means a company's financial framework, which is composed of long-term debt, preferred (and preference) stock, and common-stock equity capital (par value plus earned and capital surplus).

(x) *Capitalization ratio* means the percentage of a company's capital structure that is long-term debt, preferred (and preference) stock, and common stock-equity capital.

(y) *Consolidated system* means a parent company and all of its subsidiaries.

(z) *Subsidiary company* means a company of which more than 50 percent of the voting shares of stock are owned by another corporation, called the parent company.

(aa) *Long-term debt* means a liability due in a year or more.

(bb) *Times-interest-earned ratio* means the measure of the extent to which operating income can decline before a firm is unable to meet its annual interest costs. It is computed by dividing a firm's earnings before interest and taxes by the firm's annual interest expense.

[49 FR 38850, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984, as amended at 50 FR 32068, Aug. 8, 1985; 51 FR 17025, May 8, 1986; 60 FR 46058, Sept. 5, 1995]

§ 552.6 Forms.

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules;
Exhibit D—Application for Waiver;
Exhibit E—Initial Tariff Filing Supporting Data; and
Exhibit F—Allowable Rate of Return schedules.

(2) Statements containing the required exhibits and schedules are described in paragraphs (b), (c), (d), (e),

(g), and (h) of this section and are available upon request from the Commission. The required General Information, schedules and exhibits are contained in Forms FMC–377 and FMC–378. For carriers required to file Form FMC–378, the statements are based on the *Uniform Financial Reporting Requirements* prescribed by the Maritime Administration, U.S. Department of Transportation. For carriers required to file Form FMC–377, the statements are based on definitions contained therein. The schedules contained in these statements are distinguished from those contained in the Form FMC–378 statements by the suffix 'A'' (e.g., Schedule A–IV(A)).

(b) *Rate base (Exhibits A and A(A))*—(1) *Investment in vessels (Schedules A–I and A–I(A)).* Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service for which a statement is filed shall be listed by name, showing the original cost to the carrier or to any related company, *plus* the cost of improvements, conversions, and alterations, *less* the cost of any deductions. All additions and deductions made during the period shall be shown on a *pro rata* basis, reflecting the number of days they were applicable during the period. The result of these computations shall be called Adjusted Cost.

(i) The cargo vessels employed in the Service shall be categorized and treated separately as follows:

(A) For those cargo vessels employed exclusively in the Service for the entire period, inclusive of normal periodic lay-ups, the Adjusted Cost shall be included in the total to be allocated to the Trade. If a vessel is permanently withdrawn from the Service during the period and laid-up pending disposition and that vessel has been employed exclusively in the Service for the preceding 12 months, sixty days of the lay-up period may be assigned to the Service. If a vessel is withdrawn from the Service for renovation or converison, and if the carrier certifies that that vessel has been employed exclusively in the Service for the 12-month period immediately prior to withdrawal and will be employed exclusively in the Service for a period of at least 12 months after the renovation or conversion is completed, the Adjusted Cost shall be included in the total to be allocated to the Trade.

(B) For those cargo vessels employed in the Service for less than the entire period, the Adjusted Cost shall be prorated between voyages in the Service and voyages in Other Services. The total number of days of service excludes lay-up days and is therefore likely to be less than the number of days in the reporting period. Lay-up days of vessels in this category will normally be allocated to the respective Services on the same basis used in allocating the Adjusted Cost of such vessels, i.e., active days. However, if one or more of the vessels normally employed in the Service has been diverted temporarily to Other Services in lieu of incurring lay-up expense, no assignment of lay-up time to Other Services is required. That portion of the Adjusted Cost of the vessels not allocated to Other Services shall be included in the total to be allocated to the Trade.

(ii) The total of the adjusted cost of all vessels employed in the Service during the period which has not been allocated to Other Services, as required in § 552.6(b)(1)(i)(B), shall be allocated to the Trade in the cargo-cube mile relationship.

(2) *Accumulated depreciation—vessels (Schedules A–II and A–II(A)).* (i) Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service shall be listed separately. For vessels owned the entire year, accumulated depreciation as of the beginning and the end of the year shall be reported and the arithmetic average computed. This amount shall be allocated to the Service and to the Trade in the same proportions as the cost of the vessel was allocated on Schedule A–I or A–I(A). If the depreciable life of any equipment installed on a vessel differs from the depreciation life of the vessel, the cost and the depreciation bases shall be set forth separately.

(ii) For any vessels disposed of during the period, a proportional reduction shall be made in accumulated depreciation corresponding to the similar deduction required by § 552.6(b)(1). The accumulated depreciation upon which the

proportional reduction is calculated shall be the average of the accumulated depreciation at the beginning of the year and at date of disposal.

(iii) For any vessels acquired during the period, a proportional addition shall be calculated as one-half of the accumulated depreciation on that vessel at the end of the year.

(3) *Vessel statistics (Schedules A–III and A–III(A)).* Carriers shall provide vessel statistics as required by Schedule A–III or A–III(A).

(4) *Investment in other property and equipment; accumulated depreciation other property and equipment (Schedules A–IV and A–IV(A)).* (i) Actual investment, representing original cost to the carrier or to any related company, in other fixed assets employed in the Service shall be reported as of the beginning of the year. Accumulated depreciation for these assets shall be reported both as of the beginning and as of the end of the year. The arithmetic average of the two amounts shall also be shown and shall be the amount deducted from original cost in determining rate base. Additions and deductions during the period shall also be reported, and the carrier shall report as though all such changes took place at midyear, except for those involving substantial sums, which shall be prorated on a daily basis. Allocation to the Trade shall be based upon the actual use of the specific asset or group of assets within the Trade. For those assets employed in a general capacity, such as office furniture and fixtures, the voyage expense relationship shall be employed for allocation purposes. The basis of allocation to the Trade shall be set forth and fully explained.

(ii) With respect to any significant deductions, accumulated depreciation shall be proportionately reduced as required by § 552.6(b)(2)(ii).

(5) *Working Capital (Schedule A–V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense, and Interest Expense allocated to the Trade as provided in paragraphs (c) (2), (4) and (5) of this section.

(6) *Working capital (Schedule A–V(A)).* Working capital for tug and barge operators shall be determined as the average monthly expense. Average monthly expense shall be equal to one-twelfth of the expense of the carrier during the relevant 12-month period, computed by adding Voyage Expense, Administrative and General Expense, Interest Expense, and Inactive Vessel Expense, each as allocated to the Trade, and dividing the total by 12.

(7) *Property and equipment of related companies.* Property and equipment of related companies used by the filing carrier in the Trade shall be reported in accordance with paragraphs (b) (1), (2) and (4) of this section. The cost of such assets shall be that which is recorded on the books of the related company. Where such assets are included in the rate base, the profits or losses from intercompany transactions related to such assets are to be eliminated in accordance with paragraph (c)(11) of this section.

(8) *Capitalization of interest during construction (Schedules A–VI and A–VI (A)).* (i) Interest shall be capitalized on all funds (including the carrier's own funds) actually employed in the design, engineering study, performance inspection, construction, reconstruction or reconditioning of a capital asset. Such asset shall be owned in the carrier's name or in the name of any of its related companies. Should a carrier capitalize interest on its assets or those of related companies, it shall produce any information related to these assets upon request of the Commission. Interest on funds expended shall be eligible for capitalization when all of the following conditions and requirements are met:

(A) The construction period is 12 months or greater. The construction period begins when construction work commences on the asset and ends when

the asset is ready for use by the carrier. Strike periods during which construction is delayed for 8 or more consecutive days shall not be included in determining whether the 12-month requirement is met; and,

(B) Payments are made on a periodic basis during the period of design and construction.

(ii) Interest shall be calculated starting with the first payment and on each subsequent payment thereafter. The rate employed shall be the average prime rate for the month in which the payment is made, as set forth in the *Federal Reserve Bulletin*.

(iii) A detailed description of the interest calculations shall be submitted for each capital asset included in the rate base of the carrier in the first year of its inclusion. Such description shall be set forth on Schedule A–VI or A–VI(A), *Capitalization of Interest During Construction*. Capitalized interest shall be included in the rate base when the asset is included in the rate base, in accordance with paragraph (b) of this section, and in the same allocable amounts as the asset. A schedule shall be provided each time a rate base statement is submitted, setting forth the year in which an interest calculation statement was submitted for each asset which included capitalized construction interest in the rate base.

(iv) The effects of the interest-during construction provisions shall be applicable to all work completed after December 31, 1977.

(9) *Capitalization of leases (Schedules A–VII and A–VII(A))*. Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A–VII or A–VII(A), *Capitalization of Leases*, shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization schedule. Allocations to the Trade shall follow the requirements of paragraphs (b)(1) and (4) of this section.

(c) *Income account (Exhibits B and B(A))*—(1) *Operating revenue (Schedules B–I and B–I(A))*. (i) Revenue allocated to the Trade shall include only revenue earned from the common carriage of cargo in the domestic offshore Trade during the period, except that minor amounts of other cargo may be considered trade cargo in accordance with § 552.2(j). Revenue figures shall be reported in total for the Trade and separately for each of the 15 inbound commodities (listed by tariff descriptions) producing the highest revenues for the inbound portion of the Trade, and for each of the 15 outbound commodities (listed by tariff descriptions) producing the highest revenues for the outbound portion of the Trade. Where fewer than 15 commodities account for at least 90 percent of the total revenue for either the inbound or outbound portion of the Trade, only those commodities need be separately reported. Where the same commodity is carried under several tariff designations having different rates (e.g., potatoes refrigerated, potatoes non-refrigerated, potatoes in bags, potatoes in containers), each of these tariff designations shall be considered as an individual commodity.

(ii) Where the applicable tariff establishes a single freight-all-kinds (FAK) rate for containers that may hold more than one commodity, individual commodity designations shall be disregarded in considering that tariff item for purposes of paragraph (c)(1)(i) of this section.

(2) *Voyage expense (Schedule B–II)*. This schedule shall be submitted by vessel operators for any period in which any cargo was carried in the Service. Allocations to the Trade shall be on the following basis:

(i) For all voyages in the Service, vessel expense shall be allocated to the Trade in the cargo-cube mile or cargo cube relationship, as appropriate. Should any of the elements of vessel expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Vessel port call and cargo handling expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Other Shipping Operations Revenue shall be deducted from Gross Voyage Expense. Other Shipping Operations Revenue should be assigned directly, to the extent possible, or otherwise allocated on the basis of cargo

cube loaded and discharged at each port. Any direct assignments shall be fully set forth and explained.

(3) *Voyage expense (Schedule B–II(A)).* This schedule shall be submitted by tug and barge operators:

(i) For all voyages in the Service, transportation expense shall be allocated to the Trade in the cargo-cube mile or cargo-cube relationship, as appropriate. Should any elements of transportation expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Terminal and traffic expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Where multiple barge units are towed by a single tug, voyage expense shall be allocated on the basis of the cargo-cube relationship.

(4) *Administrative and general expense (Schedules B–III and B–III(A)).* Administrative and general expenses, (A&G) shall be allocated to the Trade using the voyage expense relationship. Direct assignments should be made where practical, particularly with respect to advertising expense related to the operation of passenger and combination vessels. Any direct assignment shall be set forth and explained. Charitable contributions shall not be allocated to the Trade. In those instances where a carrier is engaged in other business in addition to shipping, A&G should be allocated to each business in the ratio of total operating expenses for each business (*less* A&G and income taxes) to total company operating expenses (*less* A&G and income taxes).

(5) *Interest expense and debt payments (Schedules B–IV and B–IV(A)).* This schedule shall set forth the total interest and debt payments, apportioned between principal and interest, short and long-term, on debt and lease obligations. Payments on long-term debt are to be calculated consistent with the method set forth in § 552.6(e)(7) for computing the cost of long-term debt capital. Principal and interest shall be allocated to the Trade in the ratio that Trade rate base less working capital bears to company-wide assets less current assets. Where related company assets are employed by the filing company, the balance sheet figures on the related company's books for such assets shall be added to the company-wide total in computing the ratio. In those instances where interest expenses are capitalized in accordance with paragraph (b)(9) of this section, a deduction shall be made for the amount so capitalized.

(6) *Inactive vessel expense (Schedules B–V and B–V(A)).* Inactive vessel expense shall, in general, be allocated by vessel on the same basis as the investment in such vessel is included in the rate base. Inactive vessel expense applicable to vessels not used in the Service shall be excluded.

(7) *Depreciation and amortization (Schedules B–VI and B–VI(A)).* Depreciation and amortization of assets included in the rate base shall be allocated on the same bases as are the specific assets.

(8) *Construction-differential subsidy refund (Schedule B–VII).* Construction differential subsidy refunds paid or payable to the Maritime Administration in connection with vessels employed on a part-time basis in the Service and applicable to the period for which a report is being made shall be allocated to the Trade in the ratio that the cargo-cube miles of cargo carried in the Trade bear to the total cargo-cube miles of cargo in the Service. Calculation of expenses incurred due to construction-differential subsidy refunds must be reported on Schedule B–VII.

(9) *Other revenue or expense (Schedules B–VIII and B–VII(A)).* (i) Any other elements of revenue or expense, wholly or partially applicable to the Trade, shall be fully explained by a schedule showing details of allocation.

(ii) Operating-differential subsidy refunds under section 605(a) of the Merchant Marine Act, 1936, shall not be allocated to the Trade.

(10) *Provision for income tax.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other

income taxes shall be calculated at the statutory rate. Such tax rates are to be identical to those set forth in Schedules F–VI or F–VI(A) used in determining the carrier's allowable rate of return.

(11) *Related company transactions.* Income account transactions with related companies shall be shown net of intercompany profit on the appropriate schedule and allocated to the Trade on the same basis as other items in that schedule.

(d) *Rate of Return (Exhibits C and C(A))*—(1) *General.* All carriers are required to calculate rate of return on rate base. However, the Commission or individual carriers, at the Commission's discretion, may also employ fixed charges coverage and/or operating ratios as provided for in paragraph (f) of this section.

(2) *Return on rate base.* The return on rate base will be computed by dividing Trade net income plus interest expense plus provision for income taxes by Trade rate base.

(e) *Allowable rate of return on rate base (Exhibits F and F(A))*—(1) *General.* A carrier's allowable rate of return on rate base shall be set equal to the carrier's weighted average cost of capital calculated on a before-tax basis (''BTWACC''). The BTWACC is defined mathematically by the following expression:

$$\mathrm{BTWACC} = \left(\frac{D}{D+P+E}\right)K_d + \left(\frac{P}{D+P+E}\right)K_p\left(\frac{1}{1-T}\right) + \left(\frac{E}{D+P+E}\right)K_e\left(\frac{1}{1-T}\right)$$

where:

K_d is the carrier's cost of long-term debt capital;

K_p is the carrier's cost of preferred (and preference) stock capital;

K_e is the carrier's cost of common-stock equity capital;

D is the average book value of the carrier's long-term debt capital outstanding;

P is the average book value of the carrier's preferred (and preference) stock capital outstanding;

E is the average book value of the carrier's common-stock equity capital (par value plus earned and capital surplus) outstanding; and

T is the carrier's composite statutory corporate income tax rate.

A carrier's BTWACC shall be calculated in precise accordance with the rules set forth in this section.

(2) *Subsidiary carrier's capital structure.* Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, the capital structure of the subsidiary shall be used in computing the BTWACC unless the carrier has received prior approval by the Commission to use the consolidated capital structure. The subsidiary carrier's cost of common-stock equity capital, the subsidiary carrier's cost of long-term debt capital, the subsidiary carrier's cost of preferred stock capital, and the subsidiary carrier's composite statutory corporate income tax rate shall also be used in computing the BTWACC. The subsidiary carrier's cost of common-stock equity capital shall be inferred as the cost of common-stock equity capital estimated for a sample of firms having business and financial risk comparable to the subsidiary carrier when the subsidiary carrier's capital structure is used in calculating the BTWACC.

(3) *Comparable risk companies.* (i) A proxy group of companies shall be selected to impute the carrier's cost of common-stock equity capital where:

(A) The carrier is an independent company (i.e., it has no corporate parent) which issues no publicly-traded common-stock equity, or

(B) The carrier is a subsidiary that obtains its common-stock equity capital through a parent company.

(ii) The selection of the proxy group of companies shall be based on the following criteria:

(A) The proxy companies shall be based in the United States.

(B) The proxy companies shall be listed in The Value Line Investment Survey or equivalent data source. If a party uses data from sources other

than The Value Line Investment Survey, the burden is on that party to prove that the data source is reliable and the data are sufficiently detailed to calculate the BTWACC.

(C) A majority of the proxy companies shall operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and shall own or operate transportation vehicles or vessels. Companies with gross annual revenues equal to or less than $25,000,000 shall be excluded from the proxy group. Proxy group companies whose businesses are not in the transportation industry must clearly be demonstrated to have business risk equivalent to the regulated carrier's business risk.

(D) In addition, comparable risk companies shall be selected by examining some, but not necessarily all, of the following risk indicators:

(*1*) A company's total capitalization ratio and/or debt-to-equity ratio;

(*2*) The investment quality ratings of a company's long-term debt instruments;

(*3*) The investment safety ranking of a company's common-stock equity;

(*4*) The rating of a company's financial strength;

(*5*) Other such valid indicators deemed appropriate by the Commission.

(4) *Consolidated capital structure.* (i) Upon application, after notice and opportunity for comment, the Commission may authorize use of the capital structure of the consolidated system (i.e., the parent company and all of its subsidiaries) in computing the BTWACC. The application must show that:

(A) The subsidiary carrier's parent company issues publicly traded common-stock equity;

(B) The subsidiary carrier's parent company owns 90 percent or more of the subsidiary's voting shares of stock; and

(C) The business and the financial risks of the subsidiary carrier and the parent company are similar.

(ii) The similarity of the parent company's and subsidiary carrier's business risk shall be evaluated by examining the degree to which the consolidated system's profits, revenues, and expenses are composed of those of the subsidiary carrier, and the extent to which the parent's holdings are diversified into lines of business unrelated to those of the subsidiary carrier, and/or other indicators of business risk deemed appropriate by the Commission. The similarity of the parent company's and subsidiary carrier's financial risk shall be evaluated by examining the consolidated system's and the subsidiary's total capitalization ratios, debt-to-equity ratios, investment quality rankings on short- and long-term debt instruments, times-interest-earned ratios, fixed charges coverage ratios (calculated to include both FMC and non-FMC regulated operations), and/or other measures of financial risk deemed appropriate by the Commission.

(iii) When the consolidated capital structure is used, the consolidated system's cost of common-stock equity capital (issued by the parent company), the consolidated system's cost of long-term debt capital, the consolidated system's cost of preferred (and preference) stock capital, and the consolidated system's composite statutory corporate income tax rate shall also be used in estimating the subsidiary's BTWACC.

(iv) Where the Commission has approved the use of a consolidated capital structure, such use will not be subject to challenge in a subsequent rate investigation brought under section (3) of the Intercoastal Shipping Act, 1933.

(5) *Book-value, average capitalization ratios.* Capitalization ratios representing the capital structure used in deriving a carrier's BTWACC shall be computed on the basis of average projected book value outstanding over the 12-month period used to calculate projected midyear rate base in § 552.2(b)(1)(ii). The average amount of any class of capital outstanding used in determining the capitalization ratios is computed by adding the amount of a particular type of capital expected to be outstanding as of the beginning of the 12-month period to the amount of that same type of capital expected to be outstanding as of the end of the 12-month period, and dividing the sum by two.

(6) *Capitalization amounts and ratios (Schedules F–I and F–I(A)).* A carrier shall show its long-term debt, preferred stock, and common-stock equity capitalization amounts outstanding, stated in book value terms, as of the beginning and as of the end of the 12-month period used to calculate projected mid-year rate base, and the average amounts and average ratios for that 12-month period. Where a carrier is a subsidiary of a parent company, the carrier shall show its own capitalization amounts and ratios unless the carrier has applied for and has been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the carrier shall show instead the consolidated system's capitalization amounts and ratios.

(7) *Cost of long-term debt capital (Schedules F–II, F–II(A), F–III, and F–III(A)).* (i) The cost of long-term debt capital[1] shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing long-term debt; and

(B) Current cost for any new long-term debt expected to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of long-term debt capital calculated on the basis of all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be the cost of long-term debt capital used in computing the BTWACC.

(iii) The annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(7)(v)(A)(*10*) of this section by the principal amount outstanding for each issue, which yields the annual dollar cost for each issue; and

(B) Adding the annual dollar cost of each issue to obtain the total dollar cost for all issues, which is divided by the total principal amount outstanding for all issues to obtain the annual percentage rate cost of long-term debt capital for all issues.

(iv) The arithmetic average annual percentage rate cost of long-term debt capital for all issues to be used as the cost of long-term debt capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of long-term debt for all issues for the 12-month period;

(B) Adding the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total principal amount expected to be outstanding for all issues for the 12-month period; and

(C) Dividing the average total annual dollar cost of long term debt for all issues for the 12-month period by the average total principal amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of long-term debt capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of long-term debt capital calculation (Schedules F–II, F–II(A), F–III and F–III(A)).* The carrier shall calculate the annual percentage rate cost

[1] The cost of sinking fund preferred stock shall be computed in accordance with the regulations for calculating the cost of long-term debt.

of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of long-term debt for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each class and series of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Date of maturity;

(*4*) Coupon rate (%);

(*5*) Principal amount issued ($);

(*6*) Discount or premium ($);

(*7*) Issuance expense ($);

(*8*) Net proceeds to the carrier ($);

(*9*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the principal amount issued;

(*10*) Cost of money (%), which, for existing long-term debt issues, shall be the yield-to-maturity at issuance based on the coupon rate, term of issue, and net proceeds ratio determined by reference to any generally accepted table of bond yields; and, for long-term debt issues to be newly issued on or before the final day of the 12-month period, shall be based on the average current yield (published in such a publication as Moody's Bond Survey) on long-term debt instruments similar in maturity and investment quality as the long-term debt security that is to be issued;

(*11*) Principal amount outstanding (%);

(*12*) Annual cost ($); and

(*13*) Name and relationship of issuer to carrier.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of long-term debt calculations and information required in this paragraph for its own cost of long-term debt unless the carrier has applied for and received prior permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the subsidiary carrier shall show the required cost of long-term debt calculations and information for the consolidated system's long-term debt.

(vi) In the event that new long-term debt is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(7)(v)(A) (*1*) through (*13*) of this section.

(8) *Cost of preferred (and preference) stock capital (Schedules F–IV, F–IV(A), F–V, and F–V(A)).* (i) The cost of preferred (and preference) stock capital shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing preferred (and preference stock); and

(B) Current cost for any new preferred (and preference) stock to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital calculated on the basis of all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to calculate projected mid-year rate base shall be the cost of preferred (and preference) stock capital used in computing the BTWACC.

(iii) The annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(8)(v)(A)(*9*) of this section by the par or stated amount outstanding for each issue, which yields the annual dollar cost for each issue; and

(B) Adding the annual dollar cost of each issue to obtain the total for all issues, which is divided by the total par or stated amount outstanding for all issues to obtain the annual percentage rate cost of preferred (and preference) stock capital for all issues.

(iv) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used as the cost of preferred (and preference) stock capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period;

(B) Adding the total par or stated amount outstanding for all preferred (and preference) stock issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total par or stated amount outstanding for all issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total par or stated amount expected to be outstanding for all issues for the 12-month period;

(C) Dividing the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period by the average total par or stated amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of preferred (and preference) stock capital calculation (Schedules F–IV, F–IV(A), F–V and F–V(A)).* The carrier shall calculate the annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of preferred (and preference) stock for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each issue of preferred (and preference) stock as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Dividend rate (%);

(*4*) Par or stated amount of issue ($);

(*5*) Discount or premium ($);

(*6*) Issuance expense ($);

(*7*) Net proceeds to the carrier ($);

(*8*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the par or stated amount issued;

(*9*) Cost of money (%), which, for existing preferred (and preference) stock issues, shall be the dividend rate divided by the net proceeds ratio; and, for preferred (and preference) stock issues to be newly issued on or before the final day of the 12-month period, shall be the estimated dividend rate divided by the estimated net proceeds ratio;

(*10*) Par or stated amount outstanding ($);

(*11*) Annual cost ($); and

(*12*) If issue is owned by an affiliate, name and relationship of owner.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of preferred (and preference) stock calculations and information required in this paragraph for its own preferred (and preference) stock unless the carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the subsidiary carrier shall show the required cost of preferred (and preference) stock calculations and information for the consolidated system's preferred (and preference) stock.

(vi) In the event that new preferred (and preference) stock is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(8)(v)(A) (*1*) through (*12*) of this section.

(9) *Cost of common-stock equity capital.* A carrier's cost of common-stock equity capital shall be calculated using the Discounted Cash Flow (''DCF'') and the Risk Premium (''RP'') methods. A final estimate of that cost shall be derived from the separate estimates obtained using each of the methods.

(10) *DCF method.* (i) The DCF model that shall be used in calculating a carrier's cost of common-stock equity is defined algebraically as follows:

$$K_e = \frac{D_o}{P_o}(1+.5g)+g$$

where:

K_e is the carrier's cost of common-stock equity capital;
D_o is the carrier's current annualized dividend (defined as four times the current quarterly installment) per share;
P_o is the current market price per share of the carrier's common stock; and
g is the constant expected annual rate of growth in the carrier's dividends per share.

(ii) *Current market price per share of common stock.* A DCF analysis in which the current market price per share of the carrier's common stock is an average of the monthly high and low market prices during a six-month period commencing not more than nine months prior to the date on which the proposed rates are filed is required. Supplemental DCF analysis using the most recent stock price as a basis for the current market price per share of common stock may also be used.

(iii) *Additional Studies.* Other analysis or forms of the DCF model may be included in the computation and determination of the DCF estimate of the cost of common-stock equity.

(11) *RP method.* (i) The RP model that shall be used in calculating a carrier's cost of common-stock equity is defined mathematically as follows:

$$K_e = K_d + RP$$

where:

K_e is the regulated carrier's cost of common-stock equity capital;
K_d is the incremental cost of debt; and
RP is the risk premium.

(ii) *Risk Premium.* The risk premium used in the RP model shall be the historical arithmetic average return differential between rates of return actually earned on investments in the Standard and Poor's 500 Stock Index and the five-year Treasury note. A risk adjustment specific to the carrier for firm size may be included in the computation and determination of the risk premium. The risk premium shall be based on the complete historical data series published annually in the Stocks, Bonds, Bills and Inflation Yearbook, for the period 1926 through the most recent date for which the specified data are available.

(iii) *Incremental cost of debt.* A six-month average of five-year Treasury Note yields computed over a period commencing not more than nine months prior to the date on which the proposed rates are filed shall be the estimate of the incremental cost of debt in the RP model. Supplemental RP analysis using the most recent five-year Treasury Note yield as a basis for the incremental cost of debt may also be used.

(12) *Corporate income tax rate (Schedules F–VI and F–VI(A)).* The corporate income tax rate used in computing the BTWACC shall be the carrier's composite statutory corporate income tax rate for the 12-month period used to compute projected midyear rate base. Such rate shall be a composite of the carrier's Federal and State income tax rates, and of any other income tax rate to be applied to the carrier's income by any other entity to which the carrier is to pay income taxes. The carrier shall calculate and show its composite statutory corporate income tax rate as well as its Federal, State, and any other applicable statutory income tax rates separately for the 12-month period used to compute projected midyear rate base. The carrier shall also state the name of any entity other than the Federal and State governments to which it is to pay taxes. Where a carrier is a subsidiary of a parent company, the carrier shall show its own statutory corporate income tax rates unless the carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such

permission has been granted, the carrier shall show instead the consolidated system's statutory corporate income tax rates.

(13) *Flotation costs (Schedules F–VII and F–VII(A)).* (i) A carrier's cost of common-stock equity capital shall be adjusted to reflect those costs of floating new issues that are actually incurred, but only in the event that new common stock is to be issued to the general public during the 12-month period used to compute projected midyear rate base. Those flotation costs for which an allowance shall be made must be identifiable, and must be directly attributable to underwriting fees, and printing, legal, accounting, and/or other administrative expenses. No allowance shall be made for any hypothetical costs such as those associated with market pressure and market break effects. The allowance shall be applied solely to the new common-stock equity and shall not be applied to the existing common-stock equity balance. The formula that shall be used to compute such an allowance is as follows:

$$k = Fs/(1+s)$$

where:

k is the required increment to the cost of the carrier's common stock equity capital that will allow the company to recover its flotation costs;

F is the flotation costs expressed as a decimal fraction of the dollar value of new common-stock equity sales; and

s is the new common-stock equity sales expressed as a decimal fraction of the dollar value of existing common-stock equity capital.

(ii) *Flotation costs data (Schedules F–VII and F–VII(A)).* (A) In the event that new common-stock equity is to be issued during the 12-month period used to compute projected midyear rate base, the carrier shall show separately by category the estimated costs of floating the new issues to the extent that such costs are identifiable and are directly attributable to actual underwriting fees, and to printing, legal, accounting, and/or other administrative expenses that must be paid by the carrier. The carrier shall submit a statement explaining the method used in estimating the flotation costs. The carrier shall also show estimates of the date of issuance; number of shares to be issued; gross proceeds at issuance price; and net proceeds to the carrier.

(B) Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, and the parent company intends to issue new common-stock equity during the 12-month period, the carrier shall show separately by category the estimated costs to the parent company of floating the new issues, and estimates of the above items relative to the parent company's issuance of new common-stock equity, provided that such carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC.

(f) *Financial ratio methods*—(1) *Fixed charges coverage ratio.* (i) The fixed charges coverage ratio shall be computed by *dividing* the total of net income, interest expense, depreciation and amortization expense, and the provision for income taxes as allocated to the Trade *by* the Trade fixed charges. Fixed charges applicable to the Trade are the total of interest expense, principal payments, and capitalized lease obligations;

(ii) In order to evaluate the reasonableness of a carrier's fixed charges coverage ratio, the staff will analyze the debt-coverage ratios for a variety of entities including, but not limited to: (A) Public utilities; (B) government-owned corporations; (C) rural electric cooperatives; (D) various municipal enterprises such as airports and hospitals; and (E) various sectors of the transportation industry, including subsidized and unsubsidized ocean carriers. The staff will analyze the subject carrier's debt-coverage ratio in light of the nature of its debt structure (i.e., long term or short term), the overall risk conditions facing the carrier and the market environment within which the carrier is operating.

(2) *Operating ratio.* (i) The operating ratio will be computed by *dividing* total Trade expenses (adjusted for related company transactions) *by* total Trade revenue.

(ii) The reasonableness of a carrier's operating ratio will be determined by comparing it to the operating ratios of other regulated and non-regulated

companies, adjusted for relative risk. In conjunction with the operating ratio, the staff may also consider other financial ratios, such as: (A) Current; (B) leverage; and (C) turnover. The carrier's stability in earnings as compared to that of other firms will also be considered.

(g) *Application for waiver (Exhibits D and D(A)).* (1) Carriers requesting a waiver of the filing requirement of this part must submit an application (Exhibit D) and the information required in § 552.2(e).

(2) The data submitted with the application must be certified by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier. The certificate shall be notarized and state that the data submitted with the application have been prepared from the regularly maintained books and records of the carrier and that, to the best of the certificant's knowledge, the facts submitted are true and correct.

(h) *Initial tariff filing supporting data (Exhibits E and E(A)).* (1) Carriers filing initial tariffs as defined in § 552.5(r) shall complete and file Exhibit E and the information required in § 552.2(n).

(2) The data submitted with the filing must be certified by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier. The certificate shall be notarized and state that the data have been prepared from the regularly maintained books and records of the carrier and that, to the best of the certificant's knowledge, the facts submitted are true and correct.

[49 FR 38850, Oct. 1, 1984, as amended at 50 FR 32068, Aug. 8, 1985; 51 FR 17026, May 8, 1986; 60 FR 46059, Sept. 5, 1995]

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

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072–0008.

[54 FR 34182, Aug. 18, 1989]

PART 560—AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT, 1916

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560.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

SOURCE: 52 FR 43909, Nov. 17, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 560.101 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, and sections 15, 18a, 21, 22, 35, and 43 of the Shipping Act, 1916 (the Act), 46 U.S.C. app. 814, 817(a), 820, 821, 833a, and 841a.

§ 560.102 Purpose.

(a) This part implements those provisions of the Act which govern agreements between common carriers by water in interstate commerce or other persons subject to the Act.

(b) This part also establishes procedures for:

(1) Filing agreement approval requests pursuant to section 15 of the Act, including supporting statements;

(2) Filing comments and protests to such agreements and responses; and

(3) The disposition of agreement approval requests.

§ 560.103 Policies.

(a) It is the responsibility of the Commission to disapprove, cancel, or modify, by order, after notice and hearing, any agreement, or modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; to operate to the detriment of the commerce of the United States; to be contrary to the public interest; or to be in violation of the Act, and to approve all other agreements, modifications, or cancellations. This part is intended to establish procedures for the orderly and expeditious review of agreements in accordance with these statutory requirements.

(b) Section 35 of the Act provides that the Commission may exempt classes of agreements from any requirement of the Act or this part where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing and approval requirements of the Act and this part.

(c) In order to discharge the responsibilities of the Act the Commission requires sufficient time to analyze and consider every agreement, modification, and cancellation to determine whether or not it is lawful. Therefore, the Commission is establishing procedures, and form and content requirements for agreements, supporting statements, comments and protests, and responses. Parties to agreements are solely responsible for the timely filing of amendments to extend agreements containing termination dates.

(d) It is the responsibility of the Commission to insure that parties to agreements approved under section 15 of the Act are at all times complying with the requirements of that Act. In order to discharge properly this responsibility, the Commission must be fully apprised of the manner in which operations are being and will be carried out and shall require that meaningful reports on such activities be provided to the Commission.

(e) Section 15 of the Act provides that no conference agreement shall be approved, nor shall continued approval be permitted for any agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for

such withdrawal. All conference agreements shall contain reasonable and equal terms and conditions for admission and readmission to conference membership to qualified carriers.

(f) Section 15 of the Act provides that the Commission shall disapprove any agreement after notice and hearing on a finding of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints. All ratemaking groups operating under approved section 15 agreements (except leases, licenses, assignments and other agreements of similar character for the use of marine terminal facilities) shall adopt and maintain such procedures.

(g) Section 15 of the Act provides that no agreement between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, shall be approved, nor shall continued approval be permitted, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action. All such agreements shall contain a provision retaining the right of independent action.

(h) Section 15 of the Act provides that the Commission shall disapprove an agreement on a finding of inadequate policing of the obligations under it. The Commission shall require that ratemaking agreements (except leases, licenses, assignments and other agreements of similar character for the use of marine terminal facilities) contain procedures for policing the terms of the agreement.

§ 560.104 Definitions.

(a) *Agreement* means an agreement, or modification thereof, which is a written document and which reflects an understanding, arrangement, or undertaking, between two or more common carriers by water in interstate commerce or other persons subject to the Act which is required by section 15 of the Act to be filed with the Commission.

(b) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, which provides for the funding of 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.

(c) *Common carrier by water in interstate commerce* means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, of possession of the United States and any other State, Territory, or possession of the United States, or between places in the same Territory, District, or possession.

(d) *Conference agreement* means an agreement which authorizes two or more common carriers by water, each operating as a single entity in the trade covered by the agreement, to discuss and agree upon common rates, charges and conditions of carriage and to enforce adherence, by means of liquidated damages, penalties, fines, suspension, expulsion or other contractual remedies.

(e) *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 spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, which are used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and common carriers by water in interstate commerce or between two common carriers by water in interstate commerce. 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 consignees or at which outbound cargo may be received from shippers for vessel or container loading.

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

(g) *Proponents* means the parties to an agreement for which section 15 approval has been requested pursuant to this part.

(h) *Other person subject to the Act* means any person not included in the term *common carrier by water in interstate commerce*, carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other marine terminal facilities in connection with a common carrier by water in interstate commerce.

(i) *Shippers' requests and complaints* means any communication requesting a change in tariff rates, rules, or regulations; the protesting of, or objecting to, existing tariff rates, rules, or regulations; objecting to rate increases or other tariff changes; and protests against allegedly erroneous billings due to an incorrect commodity classification, incorrect weight or measurement of cargo, or other implementation of the tariff. Routine requests for rate information, sailing schedules, space availability, and the like are not included in the term.

Subpart B—Scope

§ 560.201 Subject agreements.

This part applies to agreements by or among two or more common carriers by water in interstate commerce or other persons subject to the Act, or modifications or cancellations thereof:

(a) Fixing or regulating transportation rates or fares;

(b) Giving or receiving special rates, accommodations, or other special privileges or advantages;

(c) Controlling, regulating, preventing, or destroying competition;

(d) Pooling or apportioning earnings, losses, or traffic;

(e) Allotting ports or restricting or otherwise regulating the number and character of sailings between ports;

(f) Limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or

(g) In any manner providing for an exclusive, preferential, or cooperative working arrangement.

Subpart C—Exemptions

§ 560.301 Exemption procedures.

(a) *Authority*. The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

(b) *Optional filing*. Notwithstanding any exemption from filing or approval 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*. Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 35 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons*. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) *Federal Register notice*. Notice of any proposed exemption or revocation of exemption, whether upon application or upon Commission's own motion, shall be published in the FEDERAL REGISTER. The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, DC; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 35 of the Act shall be retained by the parties and shall be made available upon request by the Bureau of Economics and Agreement Analysis for inspection during the term of the agreement and for a period of three years after its termination.

[49 FR 38850, Oct. 1, 1984, as amended at 59 FR 67230, Dec. 29, 1994]

§ 560.302 Non-substantive agreements—exemption.

(a) *Non-substantive agreement* means an agreement between common carriers by water in interstate commerce or other persons subject to the Act, acting individually or through approved agreements, which:

(1) Reflects changes in the:

(i) Name of any geographic locality stated therein;

(ii) Name of the agreement or the name or address of a party to the agreement;

(iii) Name and/or number of any other section 15 agreement, or designated provisions thereof referred to in the agreement;

(iv) Table of contents of an agreement;

(v) Date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or

(vi) Numbers or letters of articles or subarticles of agreements and references thereto in the text;

(2) Reflects changes in the titles or 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;

(3) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment, supplies, and personnel, including employees and contractors, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals; or

(4) Cancels an agreement approved under the Act and this part.

(b) Non-substantive agreements are exempt from the filing and approval requirements of section 15 and of this part; provided, however, a non-substantive agreement which modifies or cancels an agreement which is subject to the filing and approval requirements of this part shall be filed with the Commission for informational purposes within 30 days of its effective date.

(c) The filing fee for such agreements is described in section 560.401(c).

[52 FR 43908, Nov. 17, 1987, as amended at 59 FR 63908, Dec. 12, 1994]

§ 560.303 Husbanding agreements—exemption.

(a) *Husbanding agreement* means an agreement between a common carrier by water in interstate commerce and another person subject to the Act through which a carrier contracts with an agent to handle 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/operators; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include agreements which provide for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, *nor* does it include agreements that prohibit the agent from entering into similar agreements with other carriers.

(b) Husbanding agreements are exempt from the filing and approval requirements of section 15 and of this part.

(c) The filing fee for such agreements is described in section 560.401(c).

[52 FR 43908, Nov. 17, 1987, as amended at 59 FR 63908, Dec. 12, 1994]

§ 560.304 Agency agreements—exemption.

(a) *Agency agreement* means an agreement between persons subject to the

Act which provides for the agent's solicitation and booking of cargoes, and signing contracts of affreightment and bills of lading, on behalf of a common carrier by water in interstate commerce. 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) Agency agreements except those:

(1) Where a common carrier by water in interstate commerce is to be an agent for a competing common carrier by water in the same trade, or

(2) Which permit an agent to enter into similar agreements with more than one such carrier in a trade,

are exempt from the filing and approval requirements of section 15 and of this part.

(c) The filing fee for such agreements is described in section 560.401(c).

[52 FR 43908, Nov. 17, 1987, as amended at 59 FR 63908, Dec. 12, 1994]

§ 560.305 Equipment interchange agreements—exemption.

(a) *Equipment interchange agreement* means an agreement between two or more common carriers by water in interstate commerce for the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment, which provides only for 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, and no other subject.

(b) Equipment interchange agreements are exempt from the filing and approval requirements of section 15 and of this part.

(c) The filing fee for such agreements is described in section 560.401(c).

[52 FR 43908, Nov. 17, 1987, as amended at 59 FR 63908, Dec. 12, 1994]

§ 560.306 Non-exclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement means an agreement by which one common carrier by water in interstate commerce 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 and approval 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 a declaration of the nonexclusive character of the arrangement and the entire arrangement between the parties, including, when applicable, the following terms and conditions:

(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 of 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 such agreements is described in section 560.401(c).

[52 FR 43908, Nov. 17, 1987, as amended at 59 FR 63908, Dec. 12, 1994]

§ 560.307 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more common carriers in interstate commerce that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or common carriers in interstate commerce for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the domestic commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or common carriers in interstate commerce solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conferences and/or marine terminal discussion agreements.

(e) All marine terminal agreements as defined in §560.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, as defined in §560.307(b), (c) and (d) are exempt from the approval requirements of section 15 of the Shipping Act, 1916 on the condition that they be filed with the Commission. Such filing shall consist of:

(1) A true copy and 10 additional copies of the filed agreement;

(2) A letter of transmittal, which shall:

(i) Clearly state that the agreement is being filed for exemption pursuant to this paragraph;

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

(iii) Provide a concise 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;

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

(v) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(3) 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.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the approval requirements of the Shipping Act, 1916, effective on the date they are filed with the Commission.

(g) The filing fee for such agreements is described in section 560.401(c).

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992; 59 FR 63908, Dec. 12, 1994]

§560.308 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and a common carrier by water in interstate commerce that applies to marine terminal services as defined in 46 CFR 514.2 (including any marine terminal facilities, as defined in 46 CFR 514.2, which may be provided incidentally to such marine terminal services) that are provided to and paid for by a common carrier by water in interstate commerce. The term ''marine terminal services agreement'' does not include:

(1) Any agreement which 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; or

(2) Any agreement (or any modification to any agreement) previously filed with the Commission pursuant to the Shipping Act, 1916, unless said agreement, together with all previously-filed modifications, have been formally withdrawn.

(b) All marine terminal services agreements as defined in §560.308(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and part 560 of this chapter, on the condition that they do not include rates, charges, rules and regulations which are determined through a marine terminal conference agreement, as defined in 46 CFR 560.307(b).

(c) The filing fee for such agreements is described in section 560.401(c).

[57 FR 4582, Feb. 6, 1992, as amended at 59 FR 63908, Dec. 12, 1994; 60 FR 27230, May 23, 1995]

§ 560.309 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 common carriers by water, to the extent that the agreement involves ocean transportation in interstate commerce, which 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 § 560.309(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and this part 560.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for such agreements is described in section 560.401(c).

[58 FR 5630, Jan. 22, 1993, as amended at 59 FR 63908, Dec. 12, 1994]

Subpart D—Filing and Form of Agreements

§ 560.401 Filing of Agreements; fees.

(a) Agreement approval requests shall be submitted to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Such requests shall consist of a true copy and 10 additional copies of the agreement and all supporting information. Requests shall also be accompanied by a letter of transmittal which summarizes the agreement's contents and expressly requests Commission approval pursuant to section 15. The true copy shall be signed by each of the proponents personally or by an authorized representative and shall show immediately below each signature the name, position, and authority of the signer. Requests for approval which do not meet the requirements of this section shall be rejected within 30 days of receipt.

(b) Assessment agreements shall be filed and shall be approved upon filing.

(c) Agreement filings for Commission action requiring detailed justification and review by the Commission shall be accompanied by remittance of a $1,402 filing fee; agreement filings for Commission action not requiring detailed justification, but requiring review by the Commission, shall be accompanied by remittance of a $695 filing fee; and, agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a $120 filing fee.

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992; 59 FR 63908, Dec. 12, 1994]

§ 560.402 Form of agreements.

(a) A request for approval of an agreement modification shall be filed in accordance with § 560.401 and shall identify the page and paragraph to be amended and restate each such paragraph. The language to be excised shall be struck through, but not obliterated, and the substituted language, if any, shall be inserted directly following that which is to be excised. The new language shall be underscored. If the modification does not completely replace approved provisions, the page or pages on which the proposed amendments will appear shall be restated with the proposed amendments underscored and placed in proper sequence on the page.

(b) Whenever an approved agreement has been modified three times in the manner described in paragraph (a) of this section, the next succeeding modification shall be accomplished by restating the entire agreement, incorporating all previous modifications, and showing the latest change in the manner required by paragraph (a) of this section.

§ 560.403 Supporting statements.

An agreement submitted for approval may be accompanied by a supporting statement, signed by an authorized representative of the proponents, indicating the reasons which caused the making of the agreement and the results intended to flow from its implementation, or other facts or arguments which support approval. Affidavits or

other evidence may be attached to such statements. Supporting statements, including all documents, affidavits or other evidence attached thereto, are public records. No claims of confidentiality will be allowed.

§ 560.404 Time for filing agreements.

(a) All modifications of approved agreements shall be filed within the following specified times:

(1) Applications for extension of an approved agreement due to terminate by its own terms, shall be filed so that the Commission will receive the application not less than one hundred twenty (120) days prior to the date on which the approved agreement would otherwise terminate.

(2) Modifications of an approved agreement, other than as designated in paragraph (a)(1) of this section, should be filed not less than one hundred twenty (120) days prior to the date it is intended that action will begin, change or cease as a result of the provision(s) of the modification.

(b) Failure to file an application for the extension of an approved agreement due to terminate by its own terms at least one hundred twenty (120) days in advance of the termination date may result in the approved agreement terminating prior to Commission action on the filed amendment.

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992]

Subpart E—Content of Agreements

§ 560.501 Provisions of conference agreements.

(a) *Voting.* Conference agreements, agreements between or among conferences, and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) submitted to the Commission for approval shall contain a provision stating the manner in which the joint business of the parties may be carried out: i.e., full conference meeting, agents' meeting, principals' meeting, owners' meeting, through committees or subcommittees, telephone or oral polls, or through any other procedure by which the business of the joint parties may be conducted. This provision shall also include quorum requirements and the types of vote necessary to take various actions; i.e., majority, two-thirds, three-fourths, majority plus one, unanimous, etc.

(b) *Membership.* Conference agreements shall include a provision substantially as follows:

> Any common carrier by water in interstate commerce which has been regularly engaged as a common carrier in the trade covered by this agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain such a common carrier service between ports within the scope of this agreement, and who evidences an ability and intention in good faith to abide by all the terms and conditions of this agreement, may hereafter become a party to this agreement by affixing its signature thereto.

This section will not preclude the conference from imposing legitimate conditions on membership, including but not necessarily limited to, the payment of an admission fee, payment of any outstanding financial obligations arising from prior membership, or the posting of a security bond or deposit. All such conditions must be made expressed terms of the conference agreement, filed with and approved by the Commission pursuant to section 15 of the Act.

(c) Every application for membership shall be acted upon promptly.

(d) Any party may withdraw from the conference without penalty by giving at least 30 days' written notice of intention to withdraw to the conference, except that action taken by the conference to compel the payment of outstanding financial obligations by the resigning member shall not be construed as a penalty for withdrawal.

(e) No party may be expelled against its will from the conference except for failure to maintain a common carrier service between the ports within the scope of the agreement (said failure to be determined according to the minimum sailing requirements set forth in the agreement) or for failure to abide by all the terms and conditions of the agreement.

§ 560.502 Provisions of agreements of conferences and others.

(a) All agreements between common carriers by water not members of the same conference or conferences of such carriers serving trades that would otherwise be naturally competitive, shall contain provisions substantially as follows:

The parties hereto (either carriers or conferences as the case may be) agree that with respect to any actions to be taken or procedures to be followed under this agreement, any party, after (insert here a period of time not to exceed ten days) may take action or follow procedures independent of those agreed upon.

(b) The parties may stipulate in the agreement whatever event should commence the running of the notice period, and the mode of communicating the decision to take independent action.

Subpart F—Action on Agreements

§ 560.601 Federal Register notice.

With the excetion of marine terminal facilities agreements, as defined in § 560.309(a), requests for approval which are not rejected pursuant to § 560.401 shall be noticed in the FEDERAL REGISTER. The notice shall include:

(a) A short title for the agreement;

(b) The identity of the proponents;

(c) The Commission agreement number;

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

(e) A statement that the agreement and any supporting statement, including all documents, affidavits, or other evidence attached thereto, are available for inspection at the Commission's offices;

(f) The final date for filing protests or comments regarding the agreement; and

(g) The name and address of the filing agent.

[52 FR 43909, Nov. 17, 1987, as amended at 58 FR 5630, Jan. 22, 1993]

§ 560.602 Comments and protests.

(a) A comment is a written statement regarding the approvability of an agreement. Comments have no prescribed form or content and are not limited in any way, except by the time limits provided in the FEDERAL REGISTER notice. A written communication regarding the approvability of an agreement, not conforming to the requirements of paragraph (b) of this section, shall be considered a comment. Filing a comment shall not necessarily entitle a person to:

(1) Any discussion of the comment in a Commission order disposing of the agreement;

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

(3) Participation in any further proceeding which may be instituted.

(b) A protest is a written opposition to the approval of an agreement which complies with the requirements of this paragraph. A protest also constitutes an undertaking by the protestant to actively participate as a party in any further proceeding concerning the agreement, and protestants shall be so named in any Commission hearing order which may be issued. Protests shall:

(1) Identify, with particularity, the reasons why the agreement, or any constituent part, should be disapproved;

(2) Address the accuracy of any statements and conclusions submitted by the proponents pursuant to § 560.403;

(3) Allege facts which support the arguments made in paragraphs (b)(1) and (b)(2) of this section; and

(4) Specify the source or derivation of the facts alleged pursuant to paragraph (b)(3) of this section.

(c) A copy of all comments and protests filed with the Commission shall be served upon the filing agent identified in § 560.601(g) on the same date they are filed with the Commission. A certificate of service attesting that this requirement has been met shall be attached to the comment or protest.

(d) Within 15 days from the date that comments or protests are due (as specified by the FEDERAL REGISTER notice or as subsequently extended by the Commission), the proponents or their authorized representative may file a response to each such comment or protest with service to all persons which have filed comments or protests.

(e) Except as provided in this section and § 560.403, or except, in the case of

an unprotested agreement, as the Director, Bureau of Economics and Agreement Analysis may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. Amendments or supplements to documents submitted pursuant to § 560.403 and this section shall be permitted in the discretion of the Commission upon a showing of good cause, except that, in no case shall such permission be granted where the agreement has been scheduled and noticed for an agency meeting pursuant to § 503.82 of this chapter. A change in material fact or in applicable law occurring after the submission of the initial statement, comment or protest will normally constitute good cause. Inquiries as to the status of agreements shall be made to the Secretary of the Commission.

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992; 59 FR 67230, Dec. 29, 1994]

§ 560.603 Disposition of agreement approval requests.

(a) The Commission shall, by conditional or unconditional orders, approve, disapprove, or institute further proceedings regarding agreements filed with it.

(b) Further proceedings regarding an agreement will be instituted when:

(1) The Commission, in its discretion, considers further inquiry advisable;

(2) A protest alleges material facts which, if true and reasonably subject to proof on the basis of their source and derivation, and arguments advanced, would preclude approval of the agreement, except that no further proceeding will be instituted if the disputed factual issues are resolved by the proponents' acceptance of conditions imposed by a conditional order in accordance with paragraph (c) of this section;

(3) The proponents of an agreement which seemingly contravenes the standards of section 15 properly exercise their right to request a further hearing pursuant to paragraph (d) of this section.

(c) The Commission may issue a conditional order prescribing modifications in the agreement necessary to obtain approval when the agreement does or appears to contravene the standards of section 15 unless modified; and if so modified, would be approvable without further proceedings. If conditions imposed by the Commission are met within the time specified by a conditional order, the revised version of the agreement will stand approved from the date of receipt. Notice of such date shall be given to proponents or their representative by the Commission.

(d) Failure to meet conditions imposed by the Commission will result in either the automatic disapproval of the agreement or the institution of further proceedings by the Commission either on its own initiative or, where the conditional order found that the agreement was unapprovable, pursuant to a request from proponents. Any such request shall include a detailed recital of the facts that they intend to prove at that hearing, a description of evidence intended to be used to prove those facts, and an explanation as to why the facts sought to be proven support the approval of the agreement. If a finding of unapprovability was made, the conditional order will expressly state the date upon which disapproval would take place.

(e) It is unlawful to carry out the provisions of a conditionally approved or disapproved agreement prior to approval by the Commission.

Subpart G—Reporting and Record Retention Requirements

§ 560.701 General requirements.

(a) The parties to conference agreements, agreements between or among conferences and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) shall retain a record of the vote on each question voted on for at least two years. These records may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

(b) All reports or circulars, in whatever form, distributed to the parties, which relate to matters within the scope of the approved agreement, shall be retained by the parties for at least two years. This record may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

(c) 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 Economics and Agreement 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 an official of the filing party by submitting 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 2:00 p.m. Eastern time on Commission business days.

[52 FR 52909, Nov. 17, 1987, as amended at 56 FR 46389, Sept. 12, 1991; 59 FR 67230, Dec. 29, 1994]

§ 560.702 Filing of minutes—including shippers' requests and complaints.

(a) The parties to each approved conference agreement, agreement between or among conferences, or agreements subject to this part whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) shall, through a designated official, file with the Commission a report of all meetings describing all matters within the scope of the agreement which are discussed or taken up at any such meeting, and shall specify the action taken with respect to each such matter, including any shippers' requests and complaints, which are discussed at any such meeting. For the purpose of this part, the term *meeting* shall include any meeting of parties to the agreement, including meetings of their agents, principals, owners, committees or subcommittees of the parties authorized to take final action on behalf of the parties. If the agreement authorizes final action by telephonic or personal polls of the membership, a report describing each matter so considered and the action taken with respect thereto shall be filed with the Commission. These reports need not disclose the identity of parties that propose actions, or the identity of parties that participated in the discussions of any particular matter.

(b) The reports subject to paragraph (a) of this section shall be filed with the Commission within 30 days after such meetings and shall be certified as to accuracy and completeness by the Conference Chairman, Secretary, or other official.

(c) No report need be filed under paragraph (a) of this section with respect to any discussion of or action taken with regard to rates that, if adopted, would be required to be published in a tariff on file with the Commission. This reporting exemption does not apply to discussions involving general rate policy, general rate changes, the opening or closing of rates, or discussions involving items, that if adopted, would be required to be published in other tariff sections as specified in Part 514 of this chapter.

(d) Tariffs issued by or on behalf of conferences and other rate-making groups shall contain full instructions as to where and by what method shippers may file their requests and complaints, together with a sample of the rate request form, if one is used, or, in lieu thereof a statement as to what supporting information is considered necessary for processing the request or

complaint through conference channels. All changes made in such instructions shall be published in said tariffs, supplements thereto, or reissues thereof, in accordance with the tariff filing requirements of section 18(a) of the Act.

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992; 60 FR 27230, May 23, 1995]

§ 560.703 [Reserved]

§ 560.704 Filing of reports on admissions, withdrawals, and expulsions.

(a) Prompt notice of admission to membership to a conference shall be furnished to the Commission and no admission shall be effective prior to the postmark date of such notice.

(b) Advice of any denial of admission to membership, together with a statement of the reasons therefor, shall be furnished promptly to the Commission.

(c) Notice of withdrawal of any party shall be furnished promptly to the Commission.

(d) No expulsion shall become effective until a detailed statement setting forth the reason or reasons therefor has been furnished the expelled member and a copy of such notification submited to the Commission.

Subpart H—[Reserved]

Subpart I—Penalties

§ 560.901 Failure to file agreements.

Any common carrier by water in interstate commerce or other person subject to the Act entering into or carrying out an agreement subject to the Act which has not been filed with and approved, or has not been exempted, by the Commission is in violation of section 15 of the Act and this part and subject to penalties of up to $1000 for each day such violation continues.

§ 560.902 Failure to file reports.

Compliance is mandatory and failure to file the reports required by this part may result in disapproval of agreements under section 15 of the Act or penalties of up to $100 for each day of such default under section 21 of the Act.

§ 560.903 Falsification of reports.

Knowing falsification of any report required by the Act or this part is a violation of the rules of this part and is subject to the penalties set forth in section 21 of the Act and may be subject to the criminal penalties provided in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. The Commission intends that this part comply with the requirements of section 3507(f) 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:

Section	Current OMB Control No.
560.307	3072–0039
560.1—560.306	3072–0040
560.308—560.903	3072–0040

[52 FR 43909, Nov. 17, 1987; 52 FR 45961, Dec. 3, 1987]

SUBCHAPTER D—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES IN FOREIGN COMMERCE

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

Sec.
571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.
571.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

§ 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 (*1984 Act*) authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

[53 FR 43698, Oct. 28, 1988]

§ 571.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

Section 10(a)(1) of the Shipping Act of 1984 states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any ''unjust or unfair device or means.'' An essential element of the offense is use of an ''unjust or unfair device or means.'' In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an ''unjust or unfair device or means'' from the failure of a shipper to pay ocean freight. An ''unjust or unfair device or means'' could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

[58 FR 7194, Feb. 5, 1993]

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

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AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

SOURCE: 49 FR 45351, Nov. 15, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 572.101 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), and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18 of the Shipping Act of 1984 (*the Act*).

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

§ 572.102 Purpose.

This part implements those provisions of the Act which govern agreements by or among ocean common carriers and agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) 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.

§ 572.103 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 classes of agreements which must be accompanied by information submissions when they are first

filed, and sets forth the kind of information for each class of agreement which the Commission believes relevant to that review. Only that information which 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) In order 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 commerical relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing requirements of this part.

(e) Under the new regulatory framework established by the Act, the role of the Commission as a monitoring and surveillance 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 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 classes of agreements which 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 that information which is necessary to assure that Commission monitoring responsibilities will be fulfilled is requested. It is the policy of the Commission to keep the costs of regulations to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(f) The Act requires that conference agreements must contain certain mandatory provisions. Each such 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. Parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act.

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11573, Mar. 21, 1996]

§ 572.104 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, to the extent that it provides for the 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 management or capacity regulation agreement* means an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels. 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.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member must participate in at least one such tariff. 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 which establishes exclusive, preferential, or cooperative working relationships which are subject to the Shipping Act of 1984, but which do not fall precisely within the arrangements of any specifically defined agreement.

(j) *Effective agreement* means an agreement approved pursuant to the Shipping Act, 1916, or effective pursuant to an exemption under that act, or 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 common carriers associate for the purpose of gaining reciprocal access to cargo which 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 by any member of the conference agreement and/or the agreement's properly promulgated tariffs, rules or regulations.

(m) *Information form* means the form containing economic information which must accompany the filing of certain kinds of agreements.

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

(o) *Joint service agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges,

practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic 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. 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 by water.

(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 multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer 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 which must be filed at defined intervals with regard to certain kinds of agreements that are effective under the Act.

(u) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation portion is provided and is a *shipper* in its relationship with an ocean common carrier.

(v) *Ocean common carrier* means a vessel-operating common carrier, but the term does not include one engaged in ocean transportation by ferry boat or an ocean tramp.

(w) *Ocean freight forwarder* means a person in the United States that (1) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers, and (2) processes the documentation or performs related activities incident to those shipments.

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

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

(z) *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.

(aa) *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.

(bb) *Rate agreement* means an agreement between ocean common carriers which authorizes agreement upon, on either a binding basis under a common tariff or on a non-binding basis, or discussion of, any kind of rate.

(cc) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which 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 management or capacity regulation agreements.

(dd) *Service contract* means a contract between a shipper or shippers' association and an ocean common carrier or conference in which the shipper or shippers' association makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as 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 either party.

(ee) *Shipper* means an owner or other person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(ff) *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.

(gg) *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.

(hh) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel capacity for the use of 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 management or capacity regulation as used in this subpart.

(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. 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 which 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 Shipping Act of 1984 and the rules of 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.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984, as amended at 50 FR 6944, Feb. 19, 1985; 61 FR 11574, Mar. 21, 1996]

Subpart B—Scope

§ 572.201 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 exlcusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;

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

(7) Regulate or prohibit their use of service contracts.

(b) *Marine terminal operator agreements involving foreign commerce.* This part applies to agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; and

(2) Engage in exclusive, preferential, or cooperative working arrangements.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

§ 572.202 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;

(e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States;

(f) Any agreement exclusively and solely among non-vessel-operating common carriers;

(g) Any agreement exclusively and solely among ocean freight forwarders.

Subpart C—Exemptions

§ 572.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, 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.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 16 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is

sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) FEDERAL REGISTER *notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon the Commission's own motion, shall be published in the FEDERAL REGISTER. The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, D.C.; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Economics and Agreement Analysis for inspection during the term of the agreement and for a period of three years after its termination.

[49 FR 45351, Nov. 15, 1984, as amended at 59 FR 67230, Dec. 29, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.

(a) A non-substantive agreement or a non-substantive modification to an existing agreement is an agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, which:

(1) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(2) 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 or designated provisions thereof referred to in an agreement; the table of contents of an agreement; the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or renumbers or reletters articles or subarticles of agreements and references thereto in the text.

(3) Reflects changes in the titles or 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) A copy of the non-substantive agreement or modification shall be submitted for information purposes in the proper format but is otherwise exempt from the notice and waiting period requirements of the Act, and of this part.

(c) Parties to agreements may seek a determination from the Director, Bureau of Economics and Agreement Analysis as to whether a particular modification is non-substantive.

(d) The filing fee for such agreements is described in § 572.401(f).

[49 FR 45351, Nov. 15, 1984, as amended at 50 FR 6944, Feb. 19, 1985; 59 FR 63908, Dec. 12, 1994; 59 FR 67230, Dec. 29, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between a principal and an agent both of which are subject to the

Act and which provides for the agent's handling of 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 which 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 such agreements is described in § 572.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 49 FR 48927, Dec. 17, 1984; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between a principal and an agent both of which are subject to the Act, which provides for the agent's solicitation and booking of cargoes and signing contracts of affreightment and bills of lading on behalf of an 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 between persons subject to the Act 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 carrier in the same trade; or (2) which permit an agent to enter into similar agreements with more than one carrier in a trade.

(c) The filing fee for such agreements is described in § 572.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.305 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 such agreements is described in § 572.401(f).

[49 45351, Nov. 15, 1984 as amended at 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.306 Non-exclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is an 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 non–exclusive 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 such agreements is described in § 572.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 49 FR 48927, Dec. 17, 1984; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.307 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *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 in connection with waterborne common carriage in the foreign commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 572.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements as defined in § 572.307 (b), (c) and (d) are exempt from the waiting period requirements of section 6 of the Shipping Act of 1984 and part 572 of this chapter on the condition that they be filed in the form and manner presently required by part 572 of this chapter.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period requirements effective on the date of their filing with the Commission.

(g) The filing fee for such agreements is described in § 572.401(f).

[52 FR 18697, May 19, 1987, as amended at 59 FR 63908, Dec. 12, 1994]

§ 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 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.

(e) The filing fee for such agreements is described in § 572.401(f).

[53 FR 11073, Apr. 5, 1988, as amended at 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.309 Miscellaneous modifications to agreements—exemptions.

(a) Each of the following types of modifications to agreements is exempt from the notice and waiting period requirements of the Act and of this part provided that such modifications are filed for informational purposes in the proper format:

(1) Any modification which cancels an effective agreement.

(2) Any modification to the following designated agreement articles:

(i) *Article 3*—Parties to the agreement (limited to conference agreements, voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority), and discussion agreements among passenger vessel operating common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements and which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

(ii) *Article 6*—Officials of the agreement and delegations of authority.

(iii) *Article 10*—Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

(b) Any modification exempt under paragraph (a) is effective upon filing.

(c) The filing fee for such agreements is described in § 572.401(f).

[50 FR 16703, Apr. 29, 1985. Redesignated at 52 FR 18697, May 19, 1987 and 53 FR 11073, Apr. 5, 1988; 54 FR 53322, Dec. 28, 1989; 57 FR 40619, Sept. 4, 1992; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.310 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services as defined in 46 CFR 514.2 (including any marine terminal facilities, as defined in 46 CFR 514.2, which may be provided incidentally to such marine terminal services) that are provided to and paid for by an ocean common carrier. The term ''marine terminal services agreement'' does not include:

(1) Any agreement which 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; or

(2) Any agreement (or any modification to any agreement) previously filed with the Commission pursuant to the Shipping Act of 1984, unless said agreement, together with all previously-filed modifications, have been formally withdrawn.

(b) All marine terminal services agreements as defined in § 572.310(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and Part 572 of this chapter on condition that:

(1) They do not include rates, charges, rules and regulations which are determined through a marine terminal conference agreement, as defined in 46 CFR 572.307(b); and

(2) No antitrust immunity is conferred pursuant to section 7 of the Shipping Act of 1984, 46 U.S.C. app. 1706, with regard to terminal services provided to a common carrier by water under a marine terminal services agreement which is not filed with the Commission pursuant to the exemption provided by § 572.310(b).

(c) The filing fee for such agreements is described in § 572.401(f).

[57 FR 4583, Feb. 6, 1992, as amended at 59 FR 63908, Dec. 12, 1994; 60 FR 27230, May 23, 1995]

§ 572.311 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, which 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 § 572.311(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and this part 572.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for such agreements is described in § 572.401(f).

[58 FR 5631, Jan. 22, 1993, as amended at 59 FR 63908, Dec. 12, 1994]

Subpart D—Filing of Agreements

§ 572.401 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, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(1) A true copy and 7 additional copies of the filed agreement;

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

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

(b)(1) A filed agreement, to include such supporting documents as are submitted, shall be forwarded to the Commission via a letter of transmittal.

(2) The letter of transmittal shall: (i) 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; (ii) 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; (iii) clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and, (iv) be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(3) 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.

(c) Any agreement which does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 572.601.

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

(e) 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 waiting period required under the Act.

(f) Agreement filings for Commission action requiring an Information Form and review by the Commission shall be accompanied by remittance of a $1,402 filing fee; agreement filings for Commission action not requiring an Information Form, but requiring review by the Commission, shall be accompanied by remittance of a $695 filing fee; agreement filings reviewed under delegated authority shall be accompanied by remittance of a $353 filing fee; and agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a $120 filing fee.

[49 FR 45351, Nov. 15, 1984, as amended at 57 FR 40619, Sept. 4, 1992; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 572.402 Form of agreements.

The requirements of this section apply to all agreements except for cancellations, marine terminal agreements, and assessment agreements.

(a) Agreements shall be clearly and legibly typewritten on one side only of 8½ inch by 11 inch durable white looseleaf paper, providing a margin of not less than three-quarters of an inch on all edges.

(b) The first page of every agreement or appendix shall be the Title Page and shall include:

(1) The name in which the agreement holds out service, or, in the absence of such a holding out, the full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) The generic classification of the agreement in conformity with the definitions in § 572.104;

(4) The date on which the entire agreement was last republished in accordance with § 572.403(g); and

(5) If applicable, the currently effective expiration date of the agreement and/or any specific provision thereof.

(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.

(d) Each agreement and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each signature, the typewritten full name of the signing party and his

or her position, including organizational affiliation.

(e) The body of the agreement shall contain:

(1) Immediately following the Title Page, a Table of Contents providing for the location of all agreement provisions.

(2) Following the Table of Contents, the body of the agreement setting forth the operative provisions of the agreement in the order prescribed by §§572.403 and 572.404. Any additional material/provisions shall be set forth as consecutively numbered articles.

(f) Any nonsubstantive provisions, as defined in §572.302, may be separated from the main body of the agreement text by the inclusion of an appendix to the agreement. Additional provisions which are permitted to be included in an appendix are referred to in §§572.403(b)(3), 572.403(b)(6) and 572.404(a)(1). Such appendices must comply with the format requirements of paragraphs (a) and (c) of this section. Such appendices are to be serialized alphabetically with the first such appendix being designated on its first page as *appendix A*.

(g) All pages subsequent to the Title Page shall be numbered in the upper right-hand corner. At the option of the parties, the numbering of the pages may start with the first page following the Title Page as Page No. 1 and continue consecutively thereafter; or, in the alternative, the pages containing the Table of Contents may be discretely numbered using consecutive Roman numerals with all pages subsequent to the Table of Contents being consecutively numbered beginning with Page No. 1. In either event, the first edition of any one page shall be designated in the upper right-hand corner as *Original Page No.* ——.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984; 57 FR 40619, Sept. 4, 1992; 61 FR 11575, Mar. 21, 1996]

§572.403 Agreement provisions—organization.

(a) All agreements, except for cancellations, marine terminal agreements, and assessment agreements, shall be organized and shall include the content as provided by this section. The *article* numbers hereinafter enumerated are reserved for their particular respective provision or authority as indicated in this section and §572.404 and may not be used for any other subject or purpose nor may the specified subject matter appear elsewhere in the agreement except as herein provided. In the instance of a legitimately inapplicable provision, the article number and title are to be included in the text followed by the word, ''None''.

(b) All agreements shall organize and number the following articles in the following order and shall observe the guidelines as to content as provided in this section. Additional articles required to definitively express the complete understanding between the parties to the agreement and not otherwise incorporated in appendices to the agreement shall immediately follow the articles enumerated in this subpart (and, where applicable, in §572.404) and shall be numbered consecutively, commencing with Article 14.

(1) *Article 1—Full name of the agreement.*

(2) *Article 2—Purpose of the agreement.*

(3) *Article 3—Parties to the agreement.* List the current parties to the agreement to include for each participant: (i) the full legal name of the party to include any FMC-assigned agreement number associated with that name; and (ii) the address of its principal office (to the exclusion of the address of any agent or representative not an employee of the participating carrier or association). In the alternative to publishing the membership of the agreement in Article 3, the membership may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 3.

(4) *Article 4—Geographic scope of the agreement.* State the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement.

(5) *Article 5—Overview of agreement authority.* State the authorities, as set forth in §572.201 of this part, intended to be collectively exercised under the auspices of the agreement. To the extent that the summary provided does

not represent the full arrangement between the parties, additional articles or appendices of the parties' own designation and subsequent to these enumerated articles will be required to provide the specification of the authority to be exercised and the mechanics of that exercise. Article 5 is not necessarily definitive of the authority that the parties may collectively exercise pursuant to the agreement and parties may rely on the contents of the entire agreement as authority for their activities.

(6) *Article 6—Officials of the agreement and delegations of authority.* Specify, by organizational title, the administrative and executive officials determined by the parties to the agreement to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, specify: (i) The officials with authority to file agreements and agreement modifications and to submit associated supporting materials or with authority to delegate such authority; and, (ii) a statement as to any designated U.S. representative of the agreement required by this chapter. Where convenient, the contents of this article may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 6.

(7) *Article 7—Membership, withdrawal, readmission and expulsion.* Specify the terms and conditions for admission, withdrawal, readmission and expulsion to or from membership in the agreement, including membership fees, refundable deposits and other fees or charges associated with membership. Two-party agreements which do not involve any form of rate, charge or tariff determination or publication authority and which do not otherwise have any conditions of agreement participation other than the commitment of the physical resources of the respective parties are relieved of the requirements of this subparagraph. In such a case, the article number and name shall be designated as provided in paragraphs (a) and (b)(1) of this section.

(8) *Article 8—Voting.* Specify the procedures, including quorum requirements, by which the agreement membership exercises its collective authority to choose, endorse, decide the disposition of, defeat, or authorize any particular matter, issue or activity.

(9) *Article 9—Duration and termination of the agreement.* Specify, where applicable, the date on which the agreement terminates and describe the procedures to be followed to terminate the agreement.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984. Redesignated and amended at 61 FR 11575, Mar. 21, 1996]

§ 572.404 Organization of conference and interconference agreements.

(a) Each conference agreement in addition to Articles 1 through 9 contained in § 572.403, and such other matters as may be necessary to express the full understanding of the parties, shall include the following articles organized and including the content as provided in this section:

(1) *Article 10—Neutral body policing.* 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. Include a description of any such neutral body authority and procedures related thereto. In the alternative to publishing the neutral body and procedures description in Article 10, the description may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 10.

(2) *Article 11—Prohibited acts.* State affirmatively that the conference shall not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act.

(3) *Article 12—Consultation: Shippers' requests and complaints.* Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(4) Article 13—*Independent action.*

The regulations for independent action are contained in section 572.801.

(5) Article 14—*Service contracts.*

The regulations for service contracts are contained in section 572.802.

(b)(1) Each interconference agreement, in addition to Articles 1 through 9 contained in § 572.403, and Articles 10, 11, and 12 contained in paragraph (a) of this section, shall include the following article: *Article 13—Independent Action*

which specifies the independent action procedures of the agreement.

(2) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(3) Each agreement between conferences must provide the right of independent action for each conference.

[49 FR 45351, Nov. 15, 1984, as amended at 53 FR 7528, Mar. 9, 1988; 57 FR 54531, Nov. 19, 1992. Redesignated and amended at 61 FR 11575, Mar. 21, 1996]

§ 572.405 Modifications of agreements.

The requirements of this section apply to all agreements except for marine terminal agreements and assessment agreements.

(a) Agreement modifications shall be: filed in accordance with the provisions of 572.401 and in the format specified in 572.402; with the content and organization specified in 572.403 and 572.404 and in accordance with this section.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published. Such modified pages shall be designated as *revised pages* and shall publish in the upper right-hand corner of the new page the consecutive denomination of the revision, e.g., *1st Revised Page 5.*

(c) If a modification exceeds the page being modified and the parties do not wish to modify the entire agreement, the additional material may be published on an original page, designated with the same number as the page being modified and with an alphabetical suffix, i.e. *Original Page 5a.*

(d) The language being modified shall be indicated on the page filed as follows:

(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.

(3) As an alternative to publishing such indications of change on the filed page, the filed page may be submitted devoid of such indications if the filing is accompanied by a page, submitted for information/illustration only, setting forth the proposed modifications in accordance with the format prescribed in paragraphs (d) (1) and (2) of this section.

(e) When a revised or new page is revised, or the entire agreement is reissued, the change indications in paragraphs (d)(1) and (d)(2) of this section are to be deleted from the republished pages.

(f) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page which shall report the new location of the agreement's provisions.

(g)(1) In the instance of an agreement which publishes the indications of modifications, specified in paragraph (d) of this section on the filed agreement page itself, then, not later than two years after the last modification to the agreement, the entire agreement shall be republished incorporating such modifications as have been made and shall supersede the previous edition of the agreement.

(2) Such republished agreement will be filed with the Commission in accordance with the filing (except as provided in paragraph (g)(3) of this section), format and content requirements of this part and shall contain nothing other than the previously effective language and such nonsubstantive modifications as are necessary to accomplish the republication.

(3) The filing of a republished agreement, as described in paragraph (g)(2) of this section, may be accomplished by filing only an executed original true copy. No Information Form requirements apply to the filing of a republished agreement.

[49 FR 45351, Nov. 15, 1984. Redesignated and amended at 61 FR 11575, Mar. 21, 1996]

§ 572.406 Application for waiver.

(a) Upon showing of good cause, the Commission may waive the requirements of §§ 572.401, 572.402, 572.403, 572.404 and 572.405.

(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 regulation of the agreement.

[61 FR 11575, Mar. 21, 1996]

§ 572.407 Complete and definite agreements.

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

[49 FR 45351, Nov. 15, 1984. Redesignated at 61 FR 11575, Mar. 21, 1996]

Subpart E—Information Form Requirements

SOURCE: 61 FR 11575, Mar. 21, 1996, unless otherwise noted.

§ 572.501 General requirements.

(a) Certain agreements must be accompanied, upon their initial filing, with an Information Form setting forth information and data on the filing parties' prior cargo carryings, revenue results and port service patterns.

(b) The filing parties to an agreement subject to this subpart shall complete and submit an original and five copies of the applicable Information Form at the time the agreement is filed. Copies of the applicable Form may be obtained at the Office of the Secretary or by writing to the Secretary of the Commission.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. Whenever the party answering a particular part 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) The Information Form for a particular agreement may be supplemented with any other information or documentary material.

(e) The Information Form and any additional information submitted in conjunction with the filing of a particular agreement shall not be disclosed except as provided in § 572.608.

§ 572.502 Subject agreements.

Agreements subject to this subpart are divided into two classes, Class A/B and Class C. When used in this subpart:

(a) Class A/B agreement means an agreement that is one or more of the following:

(1) A rate agreement as defined in § 572.104(aa) and § 572.104(bb);

(2) A joint service agreement as defined in § 572.104(o);

(3) A pooling agreement as defined in § 572.104(y);

(4) An agreement authorizing discussion or exchange of data on vessel-operating costs as defined in § 572.104(kk); or

(5) An agreement authorizing regulation or discussion of service contracts as defined in § 572.104(dd).

(b) Class C agreement means an agreement that is one or more of the following:

(1) A sailing agreement as defined in § 572.104(cc); or

(2) A space charter agreement as defined in § 572.104(hh).

§572.503 Information form for Class A/B agreements.

The Information Form for Class A/B agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix A of this part.

The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 572.

§572.504 Information form for Class C agreements.

The Information Form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix B of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

§572.505 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the information form requirements of §572.503 or §572.504.

(b) A request for such a waiver must be approved in advance of the filing of the information form to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:

(1) The specific requirements 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 regulation of the agreement, either during pre-implementation review or during post-implementation monitoring.

Subpart F—Action on Agreements

§572.601 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 filing 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 §572.505.

(b)(1) The Commission shall reject any agreement that otherwise fails to comply with the filing and Information Form requirements of the Act and this part. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement. The entire filing, including the agreement, the Information Form and any other information or documents submitted, shall be returned to the filing party.

(2) Should the agreement be refiled, the full waiting period must be observed.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11576, Mar. 21, 1996]

§572.602 Federal Register notice.

(a) With the exception of marine terminal facilities agreements, as defined in §572.311(a), a notice of any filed agreement which is not rejected pursuant to §572.601 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) The final date for filing comments regarding the agreement.

[49 FR 45351, Nov. 15, 1984, as amended at 58 FR 5631, Jan. 22, 1993]

§572.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the FEDERAL REGISTER notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested,

comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

(b) The filing of a comment does not entitle a person to: (1) 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 which may be instituted.

[49 FR 45351, Nov. 15, 1984, as amended at 57 FR 40619, Sept. 4, 1992]

§ 572.604 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 latter 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. The waiting period resumes on the date of receipt of the additional material 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.

§ 572.605 Requests for expedited approval.

(a) Upon written request of the filing party, the Commission may shorten the review period. Accompanying the request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. If the Commission decides to approve an abbreviated waiting period, the term will be decided after consideration of the parties' needs and the Commission's ability to perform its review functions under a reduced time schedule. In no event, however, may the period be shortened to less than fourteen days after the publication of the notice of the filing of the agreement in the FEDERAL REGISTER. When a request for expedited approval is denied by the Commission, the normal waiting period specified in § 572.604 will apply. Such expedition will not be granted routinely and will be granted only in exceptional circumstances which include but are not limited to: the impending expiration of the agreement; operational urgency; Federal or State imposed time limitations; or other reasons which, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited approval will be considered for an agreement whose waiting period has resumed after having been suspended by a request for additional information.

[49 FR 45351, Nov. 15, 1984, as amended at 50 FR 16704, Apr. 29, 1985]

§ 572.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documentary material necessary to complete the statutory review required by section 6 of the Act. The request shall be made prior to the expiration of the waiting period. All additional information and documentary material shall be submitted to the Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573. If the request is not fully complied with, a statement of reasons for noncompliance shall be provided for each item or portion of such request which is not fully answered.

(b) Where the Commission has made a request for additional information material, the agreement's effective date is 45 days after receipt of the additional material. 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, 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 communication.

(d) The party upon whom a request for additional information is made will have a reasonable time to respond, as specified by the Commission. The test of reasonableness shall be based on the particular circumstances of the request and shall be determined on a case-by-case basis.

(e) Notice that a request for additional information has been made will be published by the Commission and served on commenting parties. Such notice will indicate only that a request has been made and will not specify what information is being sought. Within fifteen (15) days following service of the notice, further comments on the agreement may be filed.

[49 FR 45351, Nov. 15, 1984, as amended at 59 FR 67230, Dec. 29, 1994]

§ 572.607 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, 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; and

(2) At its discretion, grant other equitable relief which under the circumstances seems necessary or appropriate.

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

§ 572.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party 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, and replies to requests for additional information.

(b) Information which 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.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11576, Mar. 21, 1996]

§ 572.609 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 negotiations.

Subpart G—Reporting and Record Retention Requirements

§ 572.701 General requirements.

(a) *[Paragraph (a) is stayed until further notice.]* Certain agreements are required to submit quarterly Monitoring Reports on an ongoing basis for as long as they remain in effect, setting forth information and data on the agreement member lines' cargo carryings, revenue results and port service patterns under the agreement.

(b) Certain agreements are required to submit minutes of their meetings for as long as they remain in effect.

(c) *Joint Services.* For purposes of the requirements of this Subpart, a joint service filing its own Monitoring Report shall file as one carrier. If a joint service is a party to another agreement that is otherwise 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) *Address.* Monitoring Reports and minutes required by this subpart should be addressed to the Commission as follows: Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573–0001. Copies of the applicable Monitoring Report form may be obtained from the Bureau of Economics and Agreement Analysis. The lower, left-hand corner of the envelope in which each Monitoring Report or set of minutes is forwarded should indicate the nature of its contents and the related agreement number. For example: ''Monitoring Report, Agreement 5000'' or ''Minutes, Agreement 5000.''

(e) *Electronic filing.* Reports and minutes required to be filed by this subpart may be filed by electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Economics and Agreement 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 2:00 p.m. Eastern time on Commission business days.

(f) *Time for filing.* Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the applicable Monitoring Report shall be supplied to each item. Whenever the party answering a particular part 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 information or documentary material.

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted for 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.

[49 FR 45431, Nov. 15, 1984, as amended at 59 FR 67231, Dec. 29, 1994; 61 FR 11576, Mar. 21, 1996; 61 FR 40530, Aug. 5, 1996]

EFFECTIVE DATE NOTE: At 61 FR 11576, Mar. 21, 1996, §572.701(a) was added, and the effective date was stayed until further notice.

§ 572.702 Agreements subject to Monitoring Report requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are divided into three classes, Class A, Class B and Class C. When used in this subpart:

(i) *Class A agreement* means an agreement that is subject to the definition set forth in § 572.502(a) and has market shares of 50 percent or more in half or more of its sub-trades.

(2) *Class B agreement* means an agreement that is subject to the definition set forth in § 572.502(a) but does not have market shares of 50 percent or more in half or more of its sub-trades.

(b) Classification of an agreement as ''Class A'' or ''Class B'' for purposes of its reporting obligations under this subpart shall be done by the Bureau of Economics and Agreement Analysis, based in the first instance on the market share data reported on the agreement's Information Form pursuant to § 572.503, or on similar data otherwise obtained. Thereafter, before the beginning of each calendar year, the Bureau of Economics and Agreement Analysis shall determine whether the agreement should be classified as ''Class A'' or ''Class B'' for that year, based on the market share data reported on the agreement's quarterly Monitoring Report for the previous second quarter (April–June).

(c) *Class C agreement* means an agreement that is subject to the definition set forth in § 572.502(b).

[61 FR 11576, Mar. 21, 1996, as amended at 61 FR 40531, Aug. 5, 1996]

EFFECTIVE DATE NOTE: 1. At 61 FR 11564, 11576, Mar. 21, 1996, §572.702 was added, and the effective date was stayed until further notice.

2. At 61 FR 40531, Aug. 5, 1996, §572.702(b) was revised. For the convenience of the reader, the superseded text is set forth as follows:

§ 572.702 Agreements subject to Monitoring Report requirements.

* * * * *

(b) * * * Thereafter, at the beginning of each calendar year, the Bureau of Economics and Agreement Analysis shall determine whether the agreement should be classified as ''Class A'' or ''Class B'' for that year, based on the market share data reported on the agreement's quarterly Monitoring Report for the third quarter (July–September) of the previous calendar year.

* * * * *

§ 572.703 Monitoring report for Class A agreements.

The Monitoring Report form for Class A agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix C of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

[61 FR 11577, Mar. 21, 1996]

§ 572.704 Monitoring report for Class B agreements.

The Monitoring Report form for Class B agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix D of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

[61 FR 11577, Mar. 21, 1996]

§ 572.705 Monitoring report for Class C agreements.

The Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix E of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

[61 FR 11577, Mar. 21, 1996]

§ 572.706 Filing of minutes—including shippers' requests and complaints, and consultations.

(a) *Meetings.* For purposes of this subpart, the term *meeting* shall include

any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal polls of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, maritime terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, including shippers' requests and complaints, as well as consultations with shippers and shippers' associations, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the Commodity Rate Section, Class Rate Section, or Open Rate Section of the pertinent tariff on file with the Commission except that this exemption does not apply to discussions limited to general rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign Meeting No. 1 to its minutes, the next meeting will be assigned Meeting No. 2, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984. Redesignated and amended at 57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996]

§ 572.707 Other documents.

Each agreement required to file minutes pursuant to § 572.706 shall list in said minutes all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters:

(a) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(b) Studies regarding proposed changes to the conference agreement or its membership.

(c) Non-conference competition.

(d) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(e) Trade tonnaging requirements, vessel utilization and vessel replacement plans.

(f) Conference participation in trade (market share).

(g) The exercise of the right of independent action.

(h) Development of transportation technology and intermodal services.

(i) Malpractices.

(j) Use of service contracts, time volume rate schemes and loyalty contracts.

(k) Conference relationship with shippers and shipper groups.

(l) Governmental and other foreign requirements affecting the conference.

[57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996]

§ 572.708 Retention of records.

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is

distributed to the members. Such documents may be requested by the Director, Bureau of Economics and Agreement Analysis, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

[61 FR 11577, Mar. 21, 1996]

§ 572.709 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 approved in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:

(1) The specific requirements 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 regulation of the agreement.

[61 FR 11576, Mar. 21, 1996]

Subpart H—Conference Agreements

§ 572.801 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 required to be filed in a tariff under section 8(a) of the Act upon not more than 10 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 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 514.9(b) 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 filing 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 shall be included by the conference in its tariff for use by that member effective no later than 10 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 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 filed pursuant to the IA filing and notice provisions of the applicable agreement.

(2) An independent action time/volume rate filed 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 which 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 file 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 filed 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 special 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) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than 90 days from the effective date of this section. However, any effective IA TVR adopted and participated in by other member lines at the time this section is published shall be permitted to remain in effect until its specified termination date.

(j) Any new conference agreement or any modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601.

(k) If ratemaking is by sections within a conference, then any notice to the conference required by § 572.801 may be made to the particular ratemaking section.

[57 FR 54531, Nov. 19, 1992, as amended at 60 FR 27230, May 23, 1995]

§ 572.802 Service contracts.

(a) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(b) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(c) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; or impose restrictions or conditions under

which individual service contracts may be offered.

[57 FR 54531, Nov. 19, 1992]

Subpart I—Penalties

§ 572.901 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 and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, which has not been filed and has not become effective pursuant to the Act and this part is in violation of the Act and of this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 572.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable Information Form or Monitoring Report, 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 and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[61 FR 11577, Mar. 21, 1996]

Subpart J—Paperwork Reduction

§ 572.991 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, Public Law 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:

Section	Current OMB Control No.
572.101 through 572.902	3072–0045

[49 FR 45431, Nov. 15, 1984, as amended at 61 FR 11577, Mar. 21, 1996]

APPENDIX A TO PART 572—INFORMATION FORM FOR CLASS A/B AGREEMENTS AND INSTRUCTIONS

Instructions

All agreements between ocean common carriers that are Cass A/B agreements as defined in 46 CFR 572.502(a) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to each part of the Form. Where the party answering a particular part 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. For purposes of the requirements 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. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires a list of all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

Part III(A)

Part III(A) requires a statement as to whether the agreement authorizes the parties to collectively fix rates under a common tariff, to agree upon rates on a non-binding basis, or to discuss rates. Such rate activities may be authorized by a conference agreement, an interconference agreement, an agreement among one or more conferences and one or more non-conference ocean common carriers, an agreement between two or more conference member lines, an agreement between one or more conference member lines and one or more non-conference ocean common carriers, or an agreement among two or more non-conference ocean common carriers.

Part III(B)

Part III(B) requires a statement as to whether the agreement authorizes the parties to establish a joint service.

Part III(C)

Part III(C) requires a statement as to whether the agreement authorizes the parties to pool cargo or revenues.

Part III(D)

Part III(D) requires a statement as to whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs as defined in 46 CFR 572.104(kk).

Part III(E)

Part III(E) requires a statement as to whether the agreement authorizes the parties to regulate or discuss service contracts.

Part IV

Part IV requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement, during the most recent calendar quarter for which complete data are available. 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 should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

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.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the procedure described in 46 CFR 572.505. In any such application, the burden shall be on the filing carriers 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 carriers must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

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.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade 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 agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Information Form.

Part V

Part V requires, for each agreement member line that served all or any part of the geographic area covered by the agreement during all or any part of the most recent 12-month period for which complete data are available, a statement of each line's total liner cargo carryings within the geographic area, total liner revenues within the geographic area, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period

was non-containerized, each line should 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.

The Information Form specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the same 12-month period used in responding to Part V, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the 12-month period, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was non-containerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII requires a statement of the cargo volume and revenue results experienced by each of the parties to the proposed agreement from each major commodity in each subtrade. The Information Form specifies the format in which the information is to be reported.

Part VIII

Part VIII is concerned with the levels of service at each port within the entire geographic scope of the agreement. Each of the agreement lines is required to provide the number of calls it made at each port over the 12-month period used in responding to Parts V, VI and VII, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IX(A)

Part IX(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires that a representative of the agreement lines 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 is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

Information Form For Certain Agreements By Or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)

Part I Agreement Name:

Part II Other Agreements

Lists 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 III Agreement Type

(A) *Rate Agreements*

Does the agreement authorize the parties to collectively fix rates on a binding basis under a common tariff, or to agree upon rates on a non-binding basis, or to discuss rates?

Yes ☐ No ☐

(B) *Joint Service Agreements*

Does the agreement authorize the parties to establish a joint service?

Yes ☐ No ☐

(C) *Pooling Agreements*

Does the agreement authorize the parties to pool cargoes or revenues?

Yes ☐ No ☐

(D) *Vessel-Operating Costs*

Does the agreement authorize the parties to discuss or exchange data on vessel-operating costs?

Yes ☐ No ☐

(E) *Service Contracts*

Does the agreement authorize the parties to discuss or agree on service contract terms and conditions, on either a binding or non-binding basis?

Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire scope of the agreement and within each agreement sub-trade during the most recent calendar quarter for which complete data are available. The information should be provided in the format below:

MARKET SHARE REPORT FOR (INDICATE EITHER ENTIRE AGREEMENT SCOPE, OR SUB-TRADE NAME) TIME PERIOD

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part V Cargo and Revenue Results Agreement-Wide

For each party that served all or any part of the geographic area covered by the entire agreement during all or any part of the most recent 12-month period for which complete data are available, state total cargo carrying in TEUs or other unit of measurement within the entire geographic area, total revenues within the geographic area, and average revenue per TEU or other unit of measurement. The same 12-month period must be used for each party. The information should be provided in the format below:

TIME PERIOD

Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A	.....	$	$
B	.....	$	$
C	.....	$	$
Etc	.....	$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the same time period used in responding to Part V, or list the commodities accounting for 50 percent of the total carried by all the parties during the same 12-month period, whichever list is longer. The same 12-month period must be used in reporting for each sub-trade. The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-Trade

A. First leading commodity
B. Second leading commodity
C. Third leading commodity etc.

II. Sub-Trade

A. First leading commodity etc.

Part VII Cargo and Revenue Results by Sub-Trade

For the same time period used in responding to Parts V and VI, and for each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-trade A
A. First leading commodity
1. Carrier A
(a) Total TEUs (or other unit of measurement) carried
(b) Average gross revenue per TEU (or other unit of measurement)
2. Carrier B
(a) etc.
B. Second leading commodity
1. Carrier A
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part VIII Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the same time period used in responding to Parts V, VI and VII. The information should be provided in the format below:

TIME PERIOD

[Same as that used in responding to Part V]

	Port	Port	Port	Port	Port
Carrier A. Carrier B. Carrier C. Etc..					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IX

(A) Identification of Person(s) to Contact Regarding the Information Form

(1) Name _____

(2) Title _____

(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(B) Identification of an 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 572.606).

(1) Name _____

(2) Title _____

(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(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 _____

[61 FR 11577, Mar. 21, 1996]

APPENDIX B TO PART 572—INFORMATION FORM FOR CLASS C AGREEMENTS AND INSTRUCTIONS.

Instructions

All agreements between or among ocean common carriers that are Class C agreements as defined in 46 CFR 572.502(b) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to the Form. Where the filing party 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. For purposes of the requirements 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. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires a list of all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

Part III

Part III is concerned with the level of service at each port within the entire geographic scope of the agreement. Each agreement line is required to state the number of calls it made at each port over the most recent 12-month period for which complete data are available, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IV(A)

Part IV(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IV(B)

Part IV(B) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IV(C)

Part IV(C) requires that a representative of the agreement lines 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 is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

Information Form For Certain Agreements By or Among Ocean Common Carriers

Agreement Number _____

(Assigned by FMC)
Part I Agreement Name:

_____

Part II Other Agreements

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 III Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the most recent 12-month period for which complete data are available. The information should be provided in the format below.

TIME PERIOD

	Port	Port	Port	Port	Port
Carrier A Carrier B Carrier C Etc.					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IV

(A) Identification of Person(s) to Contact Regarding the Information Form
(1) Name _____
(2) Title _____
(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(B) Identification of an 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 572.606).
(1) Name _____
(2) Title _____
(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(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 _____

[61 FR 11579, Mar. 21, 1996]

APPENDIX C TO PART 572—MONITORING REPORT FOR CLASS A AGREEMENTS AND INSTRUCTIONS

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part 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. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the filing party to indicate whether the agreement authorizes the parties to operate as a conference.

Part IV

Part IV requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the calendar quarter. 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 line movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

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

An application may be filed for a waiver of the definition of ''sub-trade,'' under the provisions described in 46 CFR 572.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are 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 alternate definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form filing for the agreement.

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 calendar quarter, divided by the total liner movements in the entire agreement scope or in the sub-trade during the 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.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade 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 agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part V

Part V requires each agreement member line's total liner cargo carryings within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried

by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should 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 noncontainerized liner cargo, and average revenue per unit of measurement.

The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the calendar quarter, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the calendar quarter, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was noncontainerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII requires a statement of the cargo volume and revenue results experience by each of the agreement lines from each major commodity in each sub-trade during the calendar quarter. The Monitoring Report specifies the format in which the information is to be reported.

Part VIII

Part VIII is required to be completed if Part III is answered ''YES.'' Each conference line is required to indicate the extent to which it has taken independent rate actions on each of the leading commodities in each of the sub-trades. Part VIII also inquires into the type of shipper for whom independent rate actions have been taken. The Monitoring Report specifies the format in which the information is to be reported.

Part IX

Part IX requires each of the agreement lines to indicate any change in the nature or type of service it provided at any port within the entire geographic range of the agreement during the calendar quarter.

Part X(A)

Part X(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part X(B)

Part X(B) requires that a representative of the agreement lines 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 is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

Monitoring Report For Class A agreements
Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name:

_____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Conference Agreements

Does the agreement authorize the parties to operate as a conference?

Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each agreement sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	X,XXX	XX%

MARKET SHARE REPORT FOR CALENDAR QUARTER—Continued

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Total Agreement Market Share	X,XXX	XX%
Non-Agreement Market Share:		
Line X	X,XXX	XX%
Line Y	X,XXX	XX%
Line Z	X,XXX	XX%
Total Non-Agreement Market Share	X,XXX	XX%
Total Market	X,XXX	100%

Part V Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of measurement	Total revenues	Acg. Revenue per TEU or other unit of measurement
A		$	$
B		$	$
C		$	$
Etc		$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the calendar quarter, or list the commodities accounting for 50 percent of the total carried by all the parties during the calendar quarter, whichever list is longer. The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade
A. First leading commodity
B. Second leading commodity
C. Third leading commodity etc.
II. Sub-trade
A. First leading commodity etc.

Part VIII Cargo and Revenue Results by Sub-Trade

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade A
A. First leading commodity
1. Carrier A
(a) Total TEUs (or other units of measurement) carried
(b) Average gross revenue per TEU (or other unit of measurement)
2. Carrier B)
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part VIII Independent Rate Actions (if applicable)

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state (a) the total number of independent rate actions taken during the calendar quarter applicable to that commodity moving in that sub-trade; (b) how many of the total were independent rate actions taken to service specific shipper accounts; (c) of those, how many were for non-vessel-operating common carriers, and how many were for shippers' associations. The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade A
A. First leading commodity
1. Carrier A
(a) Number of IA rate actions
(i) Number of IA rate actions taken to service specific shipper accounts
(i)(a) Number taken to service non-vessel-operating common carrier accounts
(1)(b) Number taken to service shippers' association accounts
2. Carrier B
(a) etc.
B. Second leading commodity
1. Carrier A
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part IX Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part X

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____

(2) Title _____

(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(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 _____

[61 FR 11580, Mar. 21, 1996]

APPENDIX D TO PART 572—MONITORING REPORT FOR CLASS B AGREEMENTS AND INSTRUCTIONS.

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part 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. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the calendar quarter. 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 should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and U.S. Virgin Islands.

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

An application may be filed for a waiver of the definition of ''sub-trade,'' under the provisions described in 46 CFR 572.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individuals 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 alternate definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form filing for the agreement.

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 calendar quarter, divided by the total liner movement in the entire agreement scope or in the sub-trade during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the

entire agreement scope or in the sub-trade 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 agreement lines was non-containerized cargo, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of salings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part IV

Part IV requires each agreement member line's total liner cargo carrying within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carrying of containerized liner cargo (measured in TEUs) during the calender quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should 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 cargo, and average revenue per unit of measurement.

The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part V

Part V requires each of the agreement member lines to indicate any change in the nature or type of service it provided at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI(A)

Part VI(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part VI(B)

Part VI(B) requires that a representative of the agreement lines 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 is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

Monitoring Report For Class B Agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)

Part I Agreement

Name:

_____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX

MARKET SHARE REPORT FOR CALENDAR QUARTER—Continued

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Total Market	X,XXX	100

Part IV Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A		$	$
B		$	$
C		$	$
Etc		$	$

Part V Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____

(2) Title _____

(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(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 _____

[61 FR 11582, Mar. 21, 1996]

APPENDIX E TO PART 572—MONITORING REPORT FOR CLASS C AGREEMENTS AND INSTRUCTIONS

Instructions

A complete response must be supplied to the Report. Where the filing party 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. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires a statement of any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

Part IV(A)

Part IV(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part IV(B)

Part IV(B) requires that a representative of the agreement lines 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 is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

Monitoring Report For Class C Agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)

Part I Agreement

Name:

_____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part IV

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____
(2) Title _____
(3) Firm Name and Business

_____

(4) Business Telephone Number

_____

(5) Cable Address, Telex or Fax Number

_____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instruments 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 _____

[61 FR 11584, Mar. 21, 1996]

PART 582—CERTIFICATION OF COMPANY POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

Sec.

582.1 Scope.
582.2 Form of certification.
582.3 Reporting requirements.
582.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

APPENDIX A TO PART 582—CERTIFICATION OF POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716.

SOURCE: 51 FR 30864, Aug. 29, 1986, unless otherwise noted.

§582.1 Scope.

(a) The requirements set forth in this part are binding upon every common carrier by water and ocean freight forwarder in the foreign commerce of the United States and, at the discretion of the Commission, will apply to any shipper, shippers' association, marine terminal operator, or broker. In the case of a joint service operated as a single entity, the joint service, rather than the participants, is responsible for the provisions of this part.

(b) Information obtained under this part will be used to maintain continuous surveillance over common carrier and ocean freight forwarder activities and to deter rebating practices. Failure to file the required certification may result in a civil penalty of $5,000 for each day such violation continues. Failure of a common carrier to file an anti-rebate certification and publish notice of certification in its tariffs as provided by this part and part 514 of this chapter will result in tariff cancellation effective forty-five (45) days after notice, as provided in §514.1(c)(1)(iii)(C) of this chapter or, if an initial tariff filing, rejection. In the event a common carrier's rates are published in one or more conference tariffs, the name of the common carrier will be stricken from the list of carriers participating in those conference tariffs. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five days notice period will not be cancelled; however, those common carriers will be subject to civil penalties. Failure of an ocean freight forwarder to file an anti-rebate certification as provided by this part and part 510 of this chapter will result in suspension of that ocean

freight forwarder's license effective forty-five (45) days after notice, as provided in § 510.16(a)(6) of this chapter. The license of any freight forwarder who files an anti-rebate certification after December 31 but before the end of the forty-five days notice period will not be suspended; however, those freight forwarders will be subject to civil penalties. Failure of an ocean freight forwarder applicant to include an anti-rebate certification with a license application as provided by this part and part 510 of this chapter will result in rejection of that ocean freight forwarder applicant's license application, as provided in § 510.25(b) of this chapter.

[51 FR 30864, Aug. 29, 1986, as amended at 55 FR 35319, Aug. 29, 1990; 60 FR 27230, May 23, 1995]

§ 582.2 Form of certification.

(a) The Chief Executive Officer, *i.e.*, the most senior officer within the firm designated by the board of directors, owners, stockholders, or controlling body as responsible for the direction and management of the firm, of each common carrier and ocean freight forwarder and, when so ordered by the Commission, the Chief Executive Officer of any shipper, shippers' association, marine terminal operator, or broker, shall file with the Secretary, Federal Maritime Commission, a written certification, under oath, as prescribed in the format in appendix A to this part, attesting:

(1) That it is the stated policy of the firm that the payment, solicitation or receipt by the firm of any rebate which is unlawful under the Shipping Act of 1984, is prohibited;

(2) That this policy was recently promulgated to each owner, officer, employee, and agent of the firm; and

(3) That the firm will fully cooperate with the Commission in any investigation of illegal rebating.

(b) A description of the details of the measures instituted within the firm or otherwise to prohibit its involvement in the payment or receipt of illegal rebates shall be attached to the certification.

§ 582.3 Reporting requirements.

(a) Every common carrier required by this part to file a written certification in the form prescribed by § 582.2, shall file such certification with its initial tariff and, thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every licensed ocean freight forwarder, required by § 510.25 of this chapter to file a written certification in the form prescribed by § 582.2 of this part, shall file such certification on or before December 31, 1992, and thereafter, on or before December 31 of each succeeding even-numbered calendar year. Every applicant for an ocean freight forwarder license initially shall file such certification with its license application.

(c) The certification required by this section shall be valid from the initial filing of a tariff or granting of an ocean freight forwarder license through the first succeeding December 31 of an even-numbered calendar year.

(d) Every person other than a common carrier or ocean freight forwarder which is ordered by the Commission pursuant to § 582.2 to file a written certification shall file such certification in the manner prescribed by the Commission.

(e) In those instances in which a single firm operates in more than one capacity, such as both a non-vessel-operating common carrier and an ocean freight forwarder, a single certificate may be submitted to satisfy the reporting requirements of this section.

[57 FR 39624, Sept. 1, 1992]

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

This section displays the control numbers 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 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) 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.

Section	Current OMB Control No.
582.2 through 582.4	3072–0028

[49 FR 36858, Sept. 20, 1984]

APPENDIX A TO PART 582—CERTIFICATION OF POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

46 CFR Part 582

I, (Name of affiant), state under oath that I am the Chief Executive Officer (State exact title) of (Exact names of firm), hereinafter referred to as *The Firm*, and that:

1. It is, and shall continue to be, the policy of The Firm to prohibit its participation in the payment, solicitation, or receipt of any rebate, directly or indirectly, which is unlawful under the provisions of the Shipping Act of 1984.

2. Each owner, officer, employee and agent of The Firm was notified or reminded of this policy on (Date).

3. The Firm affirms that it will cooperate fully with the Federal Maritime Commission in any investigation of suspected rebating in United States foreign trades.

4. Attached hereto is a description of the details of measures instituted, within the Firm or otherwise, to prohibit its involvement in the payment or the receipt of illegal rebates in the foreign commerce of the United States.

The period covered by this Certification is from (Date) to (Date).

The Firm is a (check each block applicable):

_____Broker
_____Freight Forwarder (License No._____)
_____Marine Terminal Operator
_____Non-Vessel-Operating Common Carrier
_____Shipper
_____Shippers' Association
_____Vessel Operating Common Carrier

_____
(Signature of affiant)

Subscribed to and sworn before me this _____ day of _____, 19_____.

_____
Notary Public

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

Sec.
583.1 Definitions.
583.2 Scope.
583.3 Proof of financial responsibility, when required.
583.4 Financial responsibility requirements.
583.5 Resident agent.
583.6 Termination of bond or designation of resident agent.
583.7 Proof of Compliance.
583.91 OMB control number assigned pursuant to the Paperwork Reduction Act.
APPENDIX A TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) BOND FORM
APPENDIX B TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) INSURANCE FORM (FMC–67)
APPENDIX C TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GUARANTY FORM (FMC–68)
APPENDIX D TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GROUP BOND FORM (FMC–69)

AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716, and 1721.

SOURCE: 56 FR 51993, Oct. 17, 1991, unless otherwise noted.

§583.1 Definitions.

In this part:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.).

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

(1) Assumes responsibility for the transportation from 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. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination

and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(c) *Commission* means the Federal Maritime Commission.

(d) *Non-vessel-operating common carrier or NVOCC* means 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.

(e) *Ocean common carrier* means a vessel-operating common carrier.

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

§ 583.2 Scope.

This part implements the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law No. 101–595, section 710, and the Non-Vessel-Operating Common Carrier Act of 1991, Public Law No. 102–251, section 201 and applies to all NVOCCs operating in the waterborne foreign commerce of the United States.

[58 FR 5623, Jan. 22, 1993]

§ 583.3 Proof of financial responsibility, when required.

(a) Except as provided in paragraph (c) of this section, no person may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC unless a surety bond, insurance form, or guaranty form which demonstrates that such NVOCC is covered for any transportation-related liability under the Shipping Act of 1984 has been furnished to and accepted by the Commission. Where a group or association of NVOCCs accepts liability for all or part of an NVOCC's financial responsibilities for such NVOCC's transportation-related activities under the Shipping Act of 1984, the group or association of NVOCCs must file either a group supplemental coverage bond form, insurance form or guaranty form, clearly identifying each NVOCC covered, before a covered NVOCC may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC. An individual NVOCC's bond, insurance or guaranty coverage shall be for $50,000 except in the case where an individual NVOCC's responsibility is covered, in whole or in part, by a group or association's bond, insurance or guaranty. In such cases the group or association's coverage must be for $50,000 per covered member NVOCC, or $1,000,000 in aggregate.

(b) Where more than one entity operates under a common trade name, separate proof of financial responsibility is required covering each corporation or person separately providing transportation as a non-vessel-operating common carrier.

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense or the General Services Administration.

[58 FR 5623, Jan. 22, 1993, as amended at 60 FR 44437, Aug. 28, 1995]

§ 583.4 Financial responsibility requirements.

Prior to the date it commences common carriage operation, every non-vessel-operating common carrier shall establish its financial responsibility for the purpose of this part by one of the following methods:

(a) Surety bond, by filing with the Commission, simultaneously with its tariff, a valid bond on Form FMC–48, in the amount of $50,000. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Insurance, by filing with the Commission, simultaneously with its tariff, evidence of insurance on Form FMC–67. The insurance must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the insured NVOCC and must be placed with:

(1) An Insurer having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Insurer's financial rating on the rating organization's letterhead or designated form; in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of insurance provided by surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners. The Insurer must certify that it has sufficient and acceptable assets located in the United States to cover all transaction-related liabilities of the Insured NVOCC as specified under the Shipping Act of 1984.

(c) Guaranty, by filing with the Commission, simultaneously with its tariff, evidence of guaranty on Form FMC–68. The guaranty must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the covered NVOCC and must be placed with:

(1) A Guarantor having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current ''white list'' issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Guarantor's financial rating on the rating organization's letterhead or designated form; in the case of a guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of an guaranty provided by surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissions. The guarantor must certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984.

(d) Evidence of financial responsibility of the type provided for in paragraphs (a), (b) and (c) of this section established through and filed with the Commission by a group or association of NVOCCs on behalf of its members, subject to the following conditions and procedures;

(1) Each group or association of NVOCCs shall notify the Commission of its intention to participate in such a program and furnish documentation as will demonstrate its authenticity and authority to represent its members, such as articles of incorporation, bylaws, etc.;

(2) Each group or association of NVOCCs shall provide the Commission with a list certified by its Chief Executive Officer containing the names of those NVOCCs to which it will provide coverage, in whole or in part; the manner and amount of existing coverage each covered NVOCC has; an indication that the existing coverage provided each NVOCC is provided by a surety bond issued by a surety company found acceptable to the Secretary of the Treasury, or by insurance or guaranty issued by a firm meeting the requirements of paragraphs (b) or (c) of this section with coverage limits of at least $50,000.00; and the name, address and facsimile number of each surety, insurer or guarantor providing coverage pursuant to this section. Each group or association of NVOCCs shall notify the Commission within thirty (30) days of any changes to its list.

(3) The group or association shall provide the Commission with a sample copy of each type of existing financial responsibility coverage used by member NVOCCs.

(4) Each group or association of NVOCCs shall be responsible for ensuring that each member's financial responsibility coverage allows for claims to be made in the United States against the Surety, Insurer or Guarantor for any judgment for damages against the NVOCC arising from its transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the NVOCC pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712. Each group or association of NVOCCs shall be responsible for requiring each member NVOCC to provide it with valid proof of financial responsibility annually.

(5) Where the group or association of NVOCCs determines to secure on behalf of its members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not covered by a member's individual financial responsibility coverage, such additional coverage must:

(i) Allow claims to be made in the United States directly against the group or associations's Surety, Insurer or Guarantor for damages against each covered member NVOCC arising from each covered member NVOCC's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against each covered member NVOCC pursuant to section 13 of the Shipping Act of 1984, 47 U.S.C. app. 1712; and

(ii) Be for an amount up $50,000.00 for each covered member NVOCC up to a maximum of $1,000,000.00 for each group or association of NVOCCs.

(6) The coverage provided by the group or association of NVOCCs on behalf of its members, in whole or in part, shall be provided by:

(i) In the case of a surety bond, a surety company found acceptable to the Secretary of the Treasury and issued by such a surety company on Form FMC–69; and

(ii) In the case of insurance and guaranty, a firm having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization, Underwriters at Lloyd's, or surplus line insurers named on a current ''white list'' issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners and issued by such firms on Form FMC–67 and Form FMC–68, respectively.

All forms and documents for establishing financial responsibility of NVOCCs prescribed in this section shall be submitted to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparations. Such forms and documents must clearly identify the name; trade name, if any; the address; and effective January 1, 1994, the organization number as provided in 46 CFR 514.11(a) of each NVOCC. Copies of all forms may be obtained from the Commission's Bureau of Tariffs, Certification and Licensing at the address listed above, or from any Area Representative listed at 46 CFR 501.41(d).

[58 FR 5623, Jan. 22, 1993, as amended at 61 FR 51233, Oct. 1, 1996]

§ 583.5 Resident agent.

(a) Every non-vessel-operating common carrier not domiciled in the United States and every group or association of NVOCCs which provide, in whole or in part, financial coverage for a member NVOCC's financial responsibilities pursuant to § 583.4 not domiciled in the United States shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the NVOCC, group or association of

NVOCCs by registered mail, return receipt requested, at its address published in its tariff on file with the Commission, a copy of each document served upon the Secretary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) Service of administrative process, other than subpenas, may be effected upon the legal agent by mailing a copy of the document to be served by certified or registered mail, return receipt requested. Administrative subpoenas shall be served in accordance with §502.134 of this chapter.

(d) Designations of resident agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the NVOCC's tariff in accordance with §514.15(b)(24) of this chapter.

(e) Every non-vessel-operating common carrier using a group or association of NVOCCs to cover all or part of its financial responsibility requirement under §583.4 shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff in accordance with §514.15(b)(24)(ii) of this chapter.

[56 FR 51993, Oct. 17, 1991, as amended at 58 FR 5624, Jan. 22, 1993; 60 FR 27230, May 23, 1995]

§583.6 Termination of bond or designation of resident agent.

(a) Upon receipt of notice of termination by a surety bond, group supplemental coverage bond, insurance coverage or guaranty, the Commission shall notify the NVOCC or group or association of NVOCCs by certified or registered mail at its address published in its tariff or on the list required of a group or association on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC or NVOCCs as of the termination date of the bond, group supplemental coverage bond, insurance coverage or guaranty, unless the NVOCC, group or association of NVOCCs submits a valid replacement surety bond, group supplemental coverage bond, insurance coverage or guaranty before such termination date. Replacement surety bonds, group supplemental coverage bonds, insurance coverage or guaranties must bear an effective date no later than the termination date of the expiring bond, group supplemental coverage bond, insurance coverage or guaranty. The liability of the retiring surety, insurer or guarantor shall be considered as having terminated as of the effective date of the replacement surety bond, group supplemental coverage bond, insurance policy or guaranty.

(b) Upon receipt of notice of termination of a designation of resident agent, or upon receipt of alternative service of process upon the Secretary in accordance with §583.5(b), the Commission shall notify the NVOCC by certified or registered mail, at its address published in its tariff on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC effective thirty days after receipt of such notice of termination or alternative service of process upon the Secretary unless the NVOCC publishes in its tariff a replacement designation of an agent in the United States for the receipt of judicial and administrative process before such effective date of suspension or cancellation.

[56 FR 51993, Oct. 17, 1991, as amended at 58 FR 5625, Jan. 22, 1993]

§583.7 Proof of Compliance.

(a) No common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that that NVOCC has a tariff and a bond as required by sections 8 and 23 of the Act.

(b) A common carrier can obtain proof of an NVOCC's compliance with the tariff and bonding requirements by:

(1) Consulting a current list provided by the Commission of tariffed and bonded NVOCCs; or

(2) Reviewing a copy of the tariff rule published by the NVOCC and in effect under §514.15(b)(24) of this chapter; or

(3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff of general applicability as required by §514.15(b)(25) of this chapter.

(c) A common carrier that has employed the procedure prescribed in either paragraph (b) (1) or (2) of this section shall be deemed to have met its obligations under section 10(b)(14) of the Act, unless the common carrier knew that such NVOCC was not in compliance with the tariff and bonding requirements.

(d) The fee for providing the list of tariffed and bonded NVOCCs referred to in paragraph (b)(1) of this section is $122. The list is available in several forms: Hard paper copy, diskette, or tape.

[56 FR 51993, Oct. 17, 1991, as amended at 59 FR 59172, Nov. 16, 1994; 60 FR 27231, May 23, 1995]

§ 583.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072–0053.

APPENDIX A TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) BOND FORM

FEDERAL MARITIME COMMISSION NON-VESSEL OPERATING COMMON CARRIER (NVOCC) BOND (SECTION 23, SHIPPING ACT OF 1984)

_____, as Principal (hereinafter called Principal), and _____, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $_____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, Principal operates as an NVOCC in the waterborne foreign commerce of the United States, has an NVOCC tariff on file with the Federal Maritime Commission, and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Commission;

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment for damages against the Principal arising from the Principal's transportation related activities or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712.

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against the Principal arising from its transportation related activities or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the Shipping Act of 1984. However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty regardless of the number of claims or claimants.

This bond is effective the _____ day of _____, 19___, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice to the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation related activities of the Principal after the expiration of the thirty (30) day period but such termination shall not affect the liability of the Principal and Surety for any event occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this _____ day of _____, 19___.

(Please type name of signer under each signature.)

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

_____

Business Address

_____

Trade Name, If Any

Corporate Principal

State of Incorporation

Trade Name, If Any

Business Address

By

Title
(Affix Corporate Seal)

Corporate Surety

Business Address

By

Title
(Affix Corporate Seal)

[56 FR 51993, Oct. 17, 1991, as amended at 60 FR 44437, Aug. 28, 1995]

APPENDIX B TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) INSURANCE FORM [FMC–67]

Form FMC–[67]

Federal Maritime Commission

Non-Vessel-Operating Common Carrier Insurance Form Furnished as Evidence of Financial Responsibility Under 46 U.S.C. app. 1721

This is to certify, that the

(Name of Insurance Company)
(hereinafter ''Insurer'') of

(Home Office Address of Company)
has issued to

(Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs)
(hereinafter called ''Insured'') of

(Address of Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs)

a policy or policies of insurance for purposes of complying with the provisions of 46 U.S.C. app. 1721 and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984.

Whereas, the Insured is or may become a Non-Vessel-Operating Common Carrier (''NVOCC'') subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, and the rules and regulations of the Federal Maritime Commission (''Commission''), or is or may become a group or association of NVOCCs, and desires to establish financial responsibility in accordance with section 23 of the Shipping 23 of 1984, has elected to file with the Commission this Insurance Form as evidence of its financial responsibility and evidence of a financial rating for the Insurer of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such organization's letterhead or designated form, or, in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

Whereas, this Insurance is written to assure compliance by the Insured with section 23 of the Shipping Act of 1984, 46 U.S.C. app. 1721, and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for non-vessel-operating common carriers, this Insurance shall be available to pay any and all claimants to whom the Insured may be legally liable for any damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710; or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712; provided, however, that Insurer's obligation for a group or association of NVOCCs shall extend only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought and that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) in aggregate, for a group or association of NVOCCs.

Whereas, the Insurer certifies that it has sufficient and acceptable assets located in the United States to cover all liabilities of Insured herein described, this Insurance shall inure to the benefit of any and all persons who have a bona fide claim against the Insured arising from its transportation-related activities under the Shipping Act of 1984, or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the

Insured pursuant to section 13 of the Shipping Act of 1984.

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of 1984 of Insured in the event that such legal liability has not been discharged by the Insured within 30 days after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction, the Federal Maritime Commission, or where all parties and claimants mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured, whereby, upon payment of the agreed sum, the Insured is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000,00) for a group or association of NVOCCs.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance or Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) for a group or association of NVOCCs, whichever comes first, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be _____ day of _____, 19_____, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by filing a notice in writing with the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of 1984 of the Insured after the expiration of the thirty (30) day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

Insurer or Insured shall immediately give notice to the Federal Maritime Commission of all lawsuits filed, judgments rendered, and payments made under the insurance policy.

(Name of Agent) _____ domiciled in the United States, with offices located in the United States, at _____ is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The Insurer will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against the Insurance.

Signed and sealed this _____ day of _____, 19____.

_____

Signature of Official signing on behalf of Insurer

_____

Type Name and Title of signer

This Insurance Form has been filed with the Federal Maritime Commission.

[58 FR 5625, Jan. 22, 1993]

APPENDIX C TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GUARANTY FORM [FMC–68]

Form FMC–[68]

Federal Maritime Commission

Guaranty in Respect of Non-Vessel-Operating Common Carrier Liability for Damages, Reparations or Penalties Arising From Transportation-Related Activities Under the Shipping Act of 1984

1. Whereas _____ (Name of applicant) (Hereinafter referred to as the ''Applicant'') is or may become a Non-Vessel-Operating Common Carrier (''NVOCC'') subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, and the rules and regulations of the Federal Maritime Commission (''FMC''), or is or may become a group or association of NVOCCs, and desires to establish its financial responsibility in accordance with section 23 of the 1984 Act, then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current

''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the Untied States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984, the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify bona fide claimants for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act of 1984 in the event that such legal liability has not been discharged by the Applicant within 30 days after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, the FMC, or where all parties and claimants mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of NVOCCs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought.

2. The Guarantor's liability under this Guaranty is respect to any claimant shall not exceed the amount due to such claimant; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) in aggregate, for each group or association of NVOCCs.

3. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act of 1984, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date 30 days after the date of receipt by FMC of notice in writing that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

4. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

5. Guarantor shall pay, subject up to limit of Fifty Thousand Dollars ($50,000.00), directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the Shipping Act of 1984 and the rules and regulations of the Federal Maritime Commission, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

6. Applicant or Guarantor shall immediately give written notice to the FMC of all lawsuits filed, judgments rendered, and payments made under the Guaranty.

7. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor agrees to appoint an agent for service of process in the United States.

8. This Guaranty shall be governed by the laws in the State of _____ to the extent not inconsistent with the rules and regulations of the FMC.

9. This Guaranty is effective the _____ day of _____, 19___, 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

10. The Guarantor hereby designates as the Guarantor's legal agent for service of process domiciled in the United States. _____, with offices located in the United States at _____, for the purposes of enforcing the Guaranty described herein.

_____

(Place and Date of Execution)

_____

(Type Name of Guarantor)

_____

(Type Address of Guarantor)

By _____

(Signature and Title)

[58 FR 5626, Jan. 22, 1993]

APPENDIX D TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GROUP BOND FORM [FMC–69]

Form FMC—[69]

Federal Maritime Commission

Federal Maritime Commission Non-Vessel-Operating Common Carrier (NVOCC) Group Supplemental Coverage Bond Form (Section 23, Shipping Act of 1984) _____, as Principal (hereinafter called Principal), and _____, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $_____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, (Principal) _____ operates as a group or association of non-vessel-operating common carriers in the waterborne foreign commerce of the United States and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Federal Maritime Commission (''Commission'');

Now, Therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment against the NVOCCs enumerated in appendix A of this bond for damages arising from any or all of the identified NVOCCs' transportation-related activities under the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712 that are not covered by the identified NVOCCs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against any or all of the NVOCCs identified in appendix A not covered by said NVOCCs insurance policy(ies), guaranty(ies) or surety bond(s) arising from said NVOCCs transportation-related activities under the Shipping Act of 1984, or order for reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against said NVOCCs pursuant to section 13 of the Shipping Act of 1984. However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed Fifty Thousand Dollars ($50,000.00) per NVOCC identified in appendix A, or One Million Dollars ($1,000,000.00) regardless of the number of NVOCCs, claims or claimants.

This bond is effective the _____ day of _____, 19___, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice to the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the NVOCCs identified in appendix A as covered by the Principal after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity occurring prior to the date when said termination becomes effective.

The Principal will promptly notify the underwriting Surety and the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any additions, deletions or changes to the NVOCCs enumerated in appendix A. In the event of additions to appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to appendix A, termination of coverage for such NVOCC(s) shall become effective thirty (30) days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the NVOCC(s) deleted from appendix A after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity of said NVOCC(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this _____ day of, 19____ (Please type name of signer under each signature).

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, if Any

Corporate Principal

Place of Incorporation

Trade Name, If Any

Business Address (Affix Corporate Seal)

By

Title

Principal's Agent for Service of Process (Required if Principal is not a U.S. Corporation)

Agent's Address

Corporate Surety

Business Address (Affix Corporate Seal)

By

Title

[58 FR 5627, Jan. 22, 1993, as amended at 60 FR 44438, Aug. 28, 1995]

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

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585.601 Actions to correct unfavorable conditions.
585.602 Penalty.

AUTHORITY: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

SOURCE: 58 FR 64910, Dec. 10, 1993, unless otherwise noted.

Subpart A—General Provisions

§ 585.101 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.103 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1920, as amended by Public Law No. 101–595.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States.

(c) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 585.104 Confidentiality.

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this part.

§ 585.105 Consultation.

(a) *Consultation with other agencies.* The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this part.

(b) Request for resolution through diplomatic channels. Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission may notify the Secretary of State that such conditions apparently exist, and may request that the Secretary seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts at a specified time.

Subpart B—Production of Information

§ 585.201 Information orders.

In furtherance of the purposes of this part—

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(b) The Commission may require a report or answers to questions to be made under oath;

(c) The Commission may prescribe the form and the time for response to a report or answers to questions.

§ 585.202 Type of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exist, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any:

(a) Owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(1) Statistics for a representative period showing passengers or cargo carried to and from the United States in

the affected trade on vessels owned, operated or chartered by it, by type, source, value, and direction;

(2) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities;

(3) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and

(4) Such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(b) Shipper, shippers' association, ocean freight forwarder, or non-vessel-operating common carrier in the affected trade to furnish any or all of the following information:

(1) Information for a representative period showing shipments made, type of cargo, commodity, carrier and vessel on which shipment was made, including furnishing copies of bills of lading and other shipping documents;

(2) Information relating to the application for, grant of, or securing of waivers or other exemption from requirements imposed by foreign governments that cargo move on national-flag, conference, or non-conference vessels;

(3) Amount of brokerage, freight forwarder compensation or other charges collected or paid in connection with shipments in the affected trade; and

(4) such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Any marine terminal operator to furnish any or all of the following information:

(1) Marine terminal facilities agreements, whether or not on file with the Commission, into which it has entered with any ocean carrier in the affected trade;

(2) Information for a representative period showing the difference between the rates agreed to for use of its facilities by any ocean carrier serving the affected trade pursuant to an agreement authorizing preferential treatment or lease terms and those rates which would otherwise have applied to such services or leases.

§ 585.203 Failure to provide information.

(a) A person who fails to file a report, answer, documentary material, or other information required under this subpart shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(b) The Commission may, when there is a failure to produce any information ordered produced under § 585.201, make appropriate findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart C—Conditions Unfavorable to Shipping

§ 585.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States;

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation systems; or

(e) Are otherwise unfavorable to shipping in the foreign trade of the United States.

Subpart D—Petitions for Section 19 Relief

§ 585.401 Who may file.

Any person who has been harmed by, or who can reasonably expect harm from, existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief under the provisions of this part.

§ 585.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

§ 585.403 Contents of petitions.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing the type and amount of revenue loss or operating cost increase suffered or projected, such as a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures which permit comparison or computation of the proportional effect of the harm alleged. For example, when the harm alleged is loss of cargo, supporting evidence shall include the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo or other non-vessel interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.404 Amendment or dismissal of petitions.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition may result in its dismissal. For good cause shown additional time for amendment may be granted.

Subpart E—Proceedings

§ 585.501 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the FEDERAL REGISTER and interested persons will then be allowed to participate in this proceeding by the submission of written data, views or

arguments, with or without opportunity to present same orally.

§ 585.502 Discovery.

The Commission may authorize a party to a proceeding to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States.

§ 585.503 Subpoenas.

In proceedings under this part, the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

§ 585.504 Witness fees.

In proceedings under this subpart, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States, subject to funds being provided by appropriations Acts.

§ 585.505 Failure to supply information.

For failure to supply information ordered to be produced or compelled by subpoena in proceedings under this part, the Commission may—

(a) After notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member; or

(b) Assess a civil penalty of not more than $5,000 for each day that the information is not provided.

§ 585.506 Enforcement of orders.

In proceedings under this part, when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties.

§ 585.507 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone, discontinue or suspend any or all such actions if the President informs the Commission that postponement, discontinuance or suspension is required for reasons of foreign policy or national security.

§ 585.508 Publication, content, and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the FEDERAL REGISTER. Except where conditions warrant and for good cause, regulations promulgated under the rules of this part shall not become effective until at least 30 days after the date of publication.

Subpart F—Corrective Actions

§ 585.601 Actions to correct unfavorable conditions.

Upon submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exist, and may, without further proceedings, issue regulations which may:

(a) Impose equalizing fees or charges;

(b) Limit sailings to and from United States ports or the amount or type of cargo carried;

(c) Suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR Part 572; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Impose a fee, not to exceed $1,000,000 per voyage;

(f) Request the collector of customs at the port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to a vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C;

(g) Request the collector of customs at the port or place of destination in the United States to collect any fees imposed by the Commission under paragraph (e) of this section;

(h) Request the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C, to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; or

(i) Take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under § 585.505 or § 585.601 of this part, or after its right to use another tariff has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

Sec.

586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

586.3 Conditions unfavorable to shipping in the United States/Ecuador Trade.

AUTHORITY: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 585, such rules shall be published in the FEDERAL REGISTER and added to this part.

[55 FR 2076, Jan. 22, 1990]

§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador trade.

(a) *Conditions unfavorable to shipping.* (1) The Federal Maritime Commission has determined that the Government of Ecuador (''GOE'') has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carrier—assessment of fees.* (1) *Voyage,* for purposes of this

section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transligra, S.A. (''Transligra''), whether on board vessels owned or operated by Transligra or in space chartered by Transligra in vessels owned or operated by others shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transligra shall pay to the Federal Maritime Commission a fee in the amount of $50,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transligra shall file with the Federal Maritime Commission a report setting forth the names of vessels operated by Transligra in the Trade, whether owned or chartered; the names of vessels on which Transligra has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transligra shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transligra.

[55 FR 2076, Jan. 22, 1990]

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

Sec.
587.1 Purpose; general provisions.
587.2 Factors indicating conditions unduly impairing access.
587.3 Petitions for relief.
587.4 Proceeding.
587.5 Receipt of relevant information.
587.6 Notification to Secretary of State.
587.7 Decision; sanctions; effective date.
587.8 Submission of decision to the President.
587.9 Postponement, discontinuance, or suspension of action.

AUTHORITY: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714, and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

SOURCE: 49 FR 45406, Nov. 15, 1984, unless otherwise noted.

NOTE: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

§587.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter *U.S. flag vessel*) to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel hereinafter *U.S. flag carrier*)

may petition the Federal Maritime Commission for relief under the authority of section 13(b)(5) of the Shipping Act of 1984 (*the Act*) (46 U.S.C. app. 1712(b)(5)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(5) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

(b)(1) This part implements the statutory notice and hearing requirement and ensures that due process is afforded to all affected parties. At the same time, it allows for flexibility in structuring proceedings so that the Commission may act expeditiously whenever harm to a U.S. flag carrier resulting from impaired access to cross trades has been demonstrated or is imminent.

(2) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and service of documents and copies of documents (§§ 502.114(b) and 502.118 of this chapter, and except as the Commission may otherwise determine by order.

(c) The condition of unduly impaired access will be found only where a U.S. flag carrier is commercially able to enter a trade in which its access is being unduly impaired, or is reasonably expected to be impaired, or where actual participation in a trade by a U.S. flag carrier is being restricted for reasons other than its commercial ability or competitiveness.

(d) In examining conditions in a trade between foreign ports, and in considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

[49 FR 45406, Nov. 15, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 587.2 Factors indicating conditions unduly impairing access.

For the purpose of this part, factors which would indicate the existence of conditions created by foreign government action or action of a common carrier acting alone or in concert with any person, which unduly impair access of a U.S. flag vessel engaged in or seeking access to ocean trade between foreign ports, include, but are not limited to:

(a) Imposition upon U.S. flag vessels or upon shippers or consignees using such vessels, of fees, charges, requirements, or restrictions different from those imposed on national-flag or other vessels, or which preclude or tend to preclude U.S. flag vessels from competing in the trade on the same basis as any other vessel.

(b) Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S. flag vessels.

(c) Use of predatory practices, possibly including but not limited to closed conferences employing fighting ships or deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result in, unequal and unfair opportunity for U.S. flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in the trade.

(e) Any other practice which unduly impairs access of a U.S. flag vessel to trade between foreign ports.

§ 587.3 Petitions for relief.

(a) *Filing.* (1) Any owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States who believes that its access to ocean trade between foreign ports has been, or will be, unduly impaired may file a written petition for relief under the provisions of this part.

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) *Contents.* Petitions for relief shall include the following and shall also include an affidavit attesting to the truth and accuracy of the information submitted:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made and a statement as to whether the party is a foreign government, agency or instrumentality thereof;

(3) A concise description and citation of the foreign law, rule or government or commercial practice complained of;

(4) A certified copy of any law, rule, regulation or other document concerned, when available and, if not in English, a certified English translation thereof;

(5) Any other information relating to any law, rule or regulation, or indicating the existence of any government or commerical practice;

(6) A description of the service offered or proposed, as a result of which petitioner is alleging harm, including information which indicates the ability of the petitioner to otherwise participate in the trade;

(7) A clear description, in detail, of the harm already caused, or which may reasonably be expected to be caused, to the petitioner for a representative period, including:

(i) Statistics documenting present or prospective cargo loss due to discriminatory government or commercial practices if harm is alleged on that basis; such statistics shall include figures for the total cargo carried or projected to be carried by petitioner in the trade for the period, and the sources of the statistics;

(ii) Information documenting how the petitioner is being prevented from entering a trade, if injury is claimed on that basis;

(iii) Statistics or other information documenting the impact of discriminatory government or commercial practices resulting in an increase in costs, service restrictions, or other harm on the basis of which injury is claimed, and the sources of the statistics; and

(iv) A statement as to why the period is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues.

(9) A recommended action, rule or regulation, the result of which will, in the view of the petitioner, address the alleged conditions unduly impairing the access of petitioner to the affected trade.

(c) *Deficient petition.* A petition which substantially fails to comply with the requirements of paragraph (b) of this section shall be rejected and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§587.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of §587.3, when there are indications that conditions unduly imparing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b)(1) Notice of the institution of any such proceeding will be published in the FEDERAL REGISTER, and that notice and petition, if any, will be served on the parties.

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to §587.5 of this part. Factual submissions shall be in affidavit form.

(3) An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(c) Following the close of the initial response period, the Commission may issue a decision or order further hearings if warranted. If further hearings are ordered, they will be conducted pursuant to procedures to be outlined by the Commission in its order.

§ 587.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(5) of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. All such submissions should be supported by affidavits of fact and memorandum of law. Relevant information may include, but is not limited to:

(1) Statistics, with sources, or, if unavailable, the best estimates pertaining to:

(i) The total cargo carried in the affected liner or bulk trade by type, source, value, tonnage and direction.

(ii) Cargo carried in the affected trade on vessels owned or operated by any person or conference, by type, source, value, tonnage and direction.

(iii) The percentage such cargo carried is of the total affected liner or bulk trade, on a tonnage and value basis.

(iv) The amount of cargo reserved by a foreign government for national-flag or other vessels in the affected trade, on a tonnage and value basis, and a listing of the types of cargo and specific commodities which are reserved for national-flag or other vessels.

(2) Information on the operations of vessels of any party serving the affected trade, including sailings to and from ports in the trade, taxes or other charges paid to foreign authorities, and subsidies or other payments received from foreign authorities.

(3) Information clarifiying the meaning of the foreign law, rule, regulation or practice complained of, and a description of its implementation.

(4) Complete copies of all conference and other agreements, including amendments and related documents, which apply in the trade.

(b) Once introduced or adduced, information of the character described in paragraph (a) of this section, and petitions and responses thereto, shall be made part of the record for decision and may provide the basis for Commission findings of fact and conclusions of law, and for the imposition of sanctions under the Act and this part.

§ 587.6 Notification to Secretary of State.

When there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission shall so notify the Secretary of State and may request that the Secretary of State seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts within a specified time period.

§ 587.7 Decision; sanctions; effective date.

(a) Upon completion of any proceeding conducted under this part, the Commission will issue and serve a decision on all parties.

(b) If the Commission finds that conditions unduly impairing access of a U.S. flag vessel to ocean trade between foreign ports exist, any of the following actions may be taken:

(1) Imposition of equalizing fees or charges applied in the foreign trade of the United States;

(2) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(3)(i) Suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports, including the carrier's right to use any or all tariffs of conferences in U.S. trades of which it is a member for any period the Commission specifies, or until such time as unimpaired access is secured for U.S. flag carriers in the affected trade.

(ii) Acceptance or handling of cargo for carriage under a tariff that has been suspended, or after a common carrier's right to utilize that tariff has been suspended pursuant to this part, will subject a carrier to the imposition of a civil penalty as provided under the Act (46 U.S.C. app. 1712(b)(3)) of not more than $50,000 per shipment; and

(4) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed

with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(5) Imposition of a charge not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(6) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in §587.2 of this part;

(7) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in §587.2 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(8) Any other action the Commission finds necessary and appropriate to address conditions unduly impairing access of a U.S.-flag vessel to trade between foreign ports.

(c) If the Commission finds that conditions impairing access of a U.S. flag vessel to ocean trade between foreign ports has not yet occurred, and punitive sanctions are warranted, such sanctions will be imposed to become effective simultaneously with the implementation of the action that would unduly impair the access of a U.S. flag vessel.

(d)(1) All decisions will be published in the FEDERAL REGISTER.

(2) Decisions imposing sanctions, except where conditions warrant and for good cause, will become effective 30 days after the date of publication.

(e) Any party may file a petition to reconsider any decision under this part. Such a petition shall be served on all other parties to the proceeding and shall not, in and of itself, stay the effective date of the Commission action.

[49 FR 45406, Nov. 15, 1984, as amended at 54 FR 11532, Mar. 21, 1989]

§587.8 Submission of decision to the President.

Concurrently with the submission of any decision imposing sanctions to the FEDERAL REGISTER pursuant to §587.7(d)(1), the Commission shall transmit that decision to the President of the United States who may, within ten days after receiving the decision, disapprove it if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

§587.9 Postponement, discontinuance, or suspension of action.

(a) The Commission may, on its own motion or upon a petition, postpone, discontinue, or suspend any action taken by it under the provisions of this part. Such a petition will be served on all other parties and will not, in and of itself, stay the effective date of Commission action.

(b) The Commission shall postpone, discontinue or suspend any action provided for in its final decision if so directed by the President for reasons of national defense or foreign policy of the United States as provided in §587.8.

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.–FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

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AUTHORITY: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

SOURCE: 54 FR 11533, Mar. 21, 1989, unless otherwise noted.

§ 588.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

§ 588.2 Definitions.

For the purposes of this part:

(a) *Common carrier, marine terminal operator, non-vessel-operating common carrier, ocean common carrier, person, shipper, shippers' association,* and *United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

(b) *Foreign carrier* means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(c) *Maritime services* means port-to-port carrier of cargo by the vessels operated by ocean common carriers;

(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(e) *United States carrier* means an ocean common carrier which operates vessels documented under the laws of the United States;

(f) *United States oceanborne trade* means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier;

(g) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 588.3 Scope.

The Commission shall take such action under this part as it considers necessary and appropriate when it determines that any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country, result in conditions that adversely affect the operations of United States carriers in United States oceanborne trade, and do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) Petitions shall set forth the following:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made, a statement as to whether the party is a foreign government, agency or instrumentality thereof, and a brief statement describing the party's function, business or operation;

(3) The name and address of each United States carrier alleged to be adversely affected, and a description, and

if possible, documentation, of why each is considered by petitioner to be a United States carrier;

(4) A precise description and, if applicable, citation of any law, rule, regulation, policy or practice of a foreign government or practice of a foreign carrier or other person causing the conditions complained of;

(5) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(6) Any other evidence of the existence of such laws and practices, evidence of the alleged adverse effects on the operations of United States carriers in United States oceanborne trade, and evidence that foreign carriers of the country involved are not subjected to similar adverse conditions in the United States.

(7) With respect to the harm already caused, or which may reasonably be expected to be caused, the following information, if available to petitioner:

(i) Statistical data documenting present or prospective cargo loss by United States carriers due to foreign government or commercial practices for a representative period, if harm is alleged on that basis, and the sources of the statistical data;

(ii) Statistical data or other information documenting the impact of the foreign government or commercial practices causing the conditions complained of, and the sources of those data; and

(iii) A statement as to why the period used is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues; and

(9) A recommended action, including any of those enumerated in §588.8, the result of which will, in the view of the petitioner, address the conditions complained of.

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§588.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in §588.3 may be initiated by the Commission on its own motion or on the petition of any person pursuant to §588.4. An investigation shall be considered to have been initiated for the purpose of the time limits imposed by the Foreign Shipping Practices Act of 1988 upon the publication in the FEDERAL REGISTER of the Commission's notice of investigation, which shall announce the initiation of the proceeding upon either the Commission's own motion or the filing of a petition.

(b) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§502.11 of this chapter) and except as the Commission may otherwise determine by order. The precise procedures and timetables for participation in investigations initiated under this part will be established on an *ad hoc* basis as appropriate and set forth in the notice. Proceedings may include oral evidentiary hearings, but only when the Commission determines that there are likely to be genuine issues of material fact that cannot be resolved on the basis of written submissions, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. In any event, investigations initiated under this part shall proceed expeditiously, consistent with due process, to conform with the time limits specified in the Foreign Shipping Practices Act and to identify promptly the conditions described in §588.3 of this part.

(c) Upon initiation of an investigation, interested persons will be given the opportunity to participate in the proceeding pursuant to the procedures set forth in the notice. Submissions filed in response to a notice of investigation may include written data and statistics, views, and legal arguments. Factual information submitted shall be certified under oath. An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

Persons who receive information requests from the Commission pursuant to § 588.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

(d) An investigation shall be completed and a decision rendered within 120 days after it has commenced as defined in paragraph (a) of this section, unless the Commission determines that an additional 90-day period is necessary in order to obtain sufficient information on which to render a decision. When the Commission determines to extend the investigation period for an additional 90 days, it shall issue a notice clearly stating the reasons therefor.

§ 588.6 Information demands and subpoenas.

(a) In furtherance of this part, the Commission may, by order, require any person (including any common carrier, shipper, shipper's association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate, and in the form and within the time prescribed by the Commission. Responses to such orders may be required by the Commission to be made under oath.

(b) The Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence as it deems necessary and appropriate in conducting an investigation under § 588.5 of this part.

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 588.4, or voluntarily submitted by any person pursuant to § 588.5(c), shall not be disclosed to the public. To this end, persons submitting information for consideration in a proceeding or investigation under this part may indicate in writing any factors they wish the Commission to consider relevant to a decision on confidentiality under this section; however, such information will be advisory only, and the actual determination will be made by the Commission. In the event that a request for confidentiality is not accommodated, the person making the request will be so advised before any disclosure occurs.

§ 588.7 Notification to Secretary of State.

Upon the publication of a petition in the FEDERAL REGISTER, or on its own motion should it determine to initiate an investigation pursuant to § 588.5, the Commission will notify the Secretary of State of same, and may request action to seek resolution of the matter through diplomatic channels. The Commission may request the Secretary to report the results of such efforts at a specified time.

§ 588.8 Action against foreign carriers.

(a) Whenever, after notice and opportunity for comment or hearing, the Commssion determines that the conditions specified in § 588.3 of this part exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier which it identifies as a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include, but is not limited to:

(1) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(2) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(3) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(4) Imposition of a charge, not to exceed $1,000,000 per voyage;

(5) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier that is identified by the Commission under this section;

(6) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under this section to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(7) Any other action the Commission finds necessary and appropriate to address adverse foreign shipping practices as described in § 588.3 of this part.

(b) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate U.S. Government agencies prior to taking any action under this action.

(c) Before any action against foreign carriers under this section becomes effective or a request under this section is made, the Commission's determination as to adverse conditions and its proposed actions and/or requests shall be submitted immediately to the President. Such actions will not become effective nor requests made if, within 10 days of receipt of the Commission's determination and proposal, the President disapproves it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.