

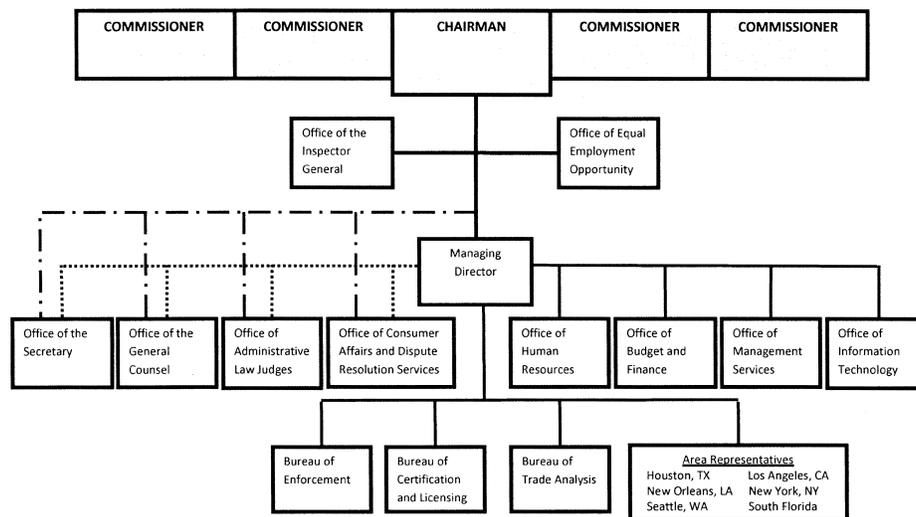
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offices shall be filed with or submitted to the Director of such Bureau or Office.

[70 FR 7659, Feb. 15, 2005, as amended at 75 FR 29454, May 26, 2010]

APPENDIX A TO PART 501—FEDERAL MARITIME COMMISSION ORGANIZATION CHART



Administrative Direction
 Technical Direction - - - - -
 Effective January 31, 2010

[75 FR 31321, June 3, 2010]

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AUTHORITY: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965.

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 Merchant

Marine Act, 1920, Merchant Marine Act, 1936, Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, 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. 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. [Rule 1.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7807, Feb. 17, 1999]

§ 502.2 Filing of documents.

(a) *Requirement for filing.* 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, must 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 identical copies of submissions in a uniform and impersonal manner and to avoid the possibility of ex parte communications within the meaning of § 502.11. These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(b) *Date and time of filing.* (1) Documents may be hand-delivered at the Commission during normal business hours from 8:30 a.m. to 5 p.m., Monday through Friday.

(2) Except with respect to initial filing of complaints pursuant to §§ 502.62 and 502.63, and claims pursuant to §§ 502.301 and 502.302, the date of filing shall be either the date on which the

pleading, document, or paper is physically delivered to the Commission by a party, the date on which a party certifies it to have been deposited in the mail or delivered to a courier, or the date of e-mail transmission.

(c) *Place of filing.* 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 must be addressed and delivered to “Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573-0001” or to *secretary@fmc.gov*.

(d) *Service of petition for review of Commission order.* Petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a) must be addressed and delivered to “General Counsel, Office of the General Counsel, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573-0001.”

(e) *Number of copies.* Parties filing documents in proceedings before the Commission or an administrative law judge must file an original, signed document and five (5) copies, and, if possible, a PDF of the document. The PDF document should be sent by e-mail to *secretary@fmc.gov* or submitted on an electronic storage device (such as compact disc or USB flash drive).

(f) *E-mail transmission of filings.* (1) Initial filing of complaints and claims pursuant to §§ 502.62–502.63 and 502.301–502.302 must be accomplished in the traditional manner on paper, rather than by e-mail.

(2) Pursuant to § 502.5 of this subpart, confidential filings must be accomplished in the traditional manner on paper, rather than by e-mail.

(3) If a filing is submitted electronically as a PDF attached to an e-mail, the original, signed document, and five (5) copies must be received by the Secretary within seven working days. The e-mail transmitting the PDF copy of a document must include a certification by the filing party that the electronic copy is a true and correct copy of the paper original, and that the paper signed original and five (5) copies are being filed with the Secretary of the

Commission. The e-mail Subject Line must include the docket number of the proceeding and be sent to *secretary@fmc.gov*.

(g) *Filing after announcement of Commission meeting prohibited.* 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.)

(h) *Return of rejected filings.* Any pleading, document, writing, or other paper submitted for filing which is rejected because it does not conform to the rules in this part will be returned to the sender.

(i) *Continuing obligation to provide contact information.* All parties and representatives are under a continuing obligation to provide the Commission and all other parties in a proceeding with accurate and current contact information including a street address, telephone number, and e-mail address.

(j) *Form of documents.* All papers to be filed under the rules in this part must be clear and legible, dated, show the docket number and title of the proceeding, document title, and include the title, if any, and address of the authorized signer or representative. An original signed in ink must be provided. Text shall appear on only one side of the paper and must be double spaced except that quotations of fifty or more words should be single-spaced and indented on the left and right without quotation marks. The paper must be strong and durable, of letter size (8½ × 11 in. or 215.9 × 279.4 mm) or A4 size (8.27 × 11.69 in. or 210 × 297 mm), with a margin of at least one inch on all four sides. Documents must be printed in clear type, and the type size, including footnotes and endnotes, must not be smaller than 12-point.

(k) *Discovery materials excluded from filing requirement.* (1) The following discovery requests and responses must not be filed with the Secretary until they

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are used in the proceeding, or the Commission or presiding officer orders filing:

- (i) Notice and transcript of depositions;
- (ii) Interrogatories;
- (iii) Requests for documents or tangible things or to permit entry onto designated land or other property;
- (iv) Requests for admission; and
- (v) Expert witness reports.

(2) The party that served the notice of deposition or discovery papers must preserve and ensure the integrity of original transcripts and discovery papers for use by the Commission or the presiding officer. A party that wants to use any part or all of discovery requests and responses in the proceeding must include the part or all of the documents in an appendix to be filed with the motion or other paper that refers to those documents. A party filing an appendix exceeding 100 pages should file an original and two (2) copies on paper and, if possible, also file such appendix by e-mail or on an electronic storage device. [Rule 2.]

[76 FR 10259, Feb. 24, 2011]

§ 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. [Rule 3.]

[76 FR 10260, Feb. 24, 2011]

§ 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 by the Secretary of the Commission in the name of the Commission. [Rule 4.]

[76 FR 10260, Feb. 24, 2011]

§ 502.5 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all filings that contain information previously designated as confidential pursuant to §§ 502.13, 502.167, 502.201(i)(1)(vii), or any other

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rules of this part or for which a request for protective order pursuant to § 502.201(i) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter that identifies the filing as “confidential” and describes the nature and extent of the authority for requesting confidential treatment. The confidential copies shall consist of the complete filing and shall include a cover page marked “Confidential-Restricted,” with the confidential materials clearly marked on each page. Confidential filings should not be made by e-mail.

(b) Whenever a confidential filing is submitted, there must also be submitted an original and two copies of a public version of the filing. Such public version shall exclude confidential materials, and shall indicate on the cover page and on each affected page “confidential materials excluded.” Public versions of confidential filings may be submitted by e-mail.

(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 5.]

[76 FR 10260, Feb. 24, 2011, as amended at 77 FR 61524, Oct. 10, 2012]

§ 502.6 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,

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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.

(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." [Rule 6.]

[76 FR 10261, Feb. 24, 2011]

§ 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 Ex parte communications.

(a) 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

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decisional process of any such proceeding, an ex parte communication relevant to the merits of the proceeding;

(b) 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 (e), (f) and (g) of this section;

(c) “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;

(d) 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:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses and memoranda stating the substance of all oral responses to the materials described in paragraphs (d)(1) and (d)(2) of this section;

(e) The Secretary shall place the materials described in paragraph (d) 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;

(f) 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;

(g) 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, as amended at 64 FR 7807, Feb. 17, 1999; 64 FR 23551, May 3, 1999; 64 FR 33762, June 24, 1999]

§ 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. [Rule 12.]

[58 FR 27210, May 7, 1993, as amended at 64 FR 7807, Feb. 17, 1999]

§ 502.13 Privacy protection for filings made with the Commission.

(a) *Redacted filings.* Unless the Commission or presiding officer orders otherwise, in an electronic or paper filing that contains an individual’s social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) The last four digits of the social-security number and taxpayer-identification number;
- (2) The year of the individual’s birth;
- (3) The minor’s initials; and

(4) The last four digits of the financial-account number.

(b) *Exemptions from the redaction requirement.* The redaction requirement does not apply to the following:

(1) The record of an administrative or agency proceeding;

(2) The record of a state-court proceeding;

(3) The record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; and

(4) A filing covered by paragraph (c) of this section.

(c) *Filings made under seal.* The Commission or presiding officer may order that a filing be made under seal without redaction. The Commission or presiding officer may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) *Protective orders.* For good cause, the Commission or presiding officer may by order in a case:

(1) Require redaction of additional information; or

(2) Limit or prohibit a nonparty's remote electronic access to a document filed with the Commission.

(e) *Option for additional unredacted filing under seal.* A person making a redacted filing may also file an unredacted copy under seal. The Commission must retain the unredacted copy as part of the record.

(f) *Option for filing a reference list.* A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) *Waiver of protection of identifiers.* A person waives the protection of this rule as to the person's own information by filing it without redaction and not under seal. [Rule 13.]

[76 FR 10261, Feb. 24, 2011]

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) *Non-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 appearance.* An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. A person who desires to appear specially must expressly so state when entering the appearance, and, at that time, shall also state the questions or issues to which the appearance is confined; otherwise the appearance will be considered general. [Rule 21.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7807, Feb. 17, 1999; 78 FR 45069, July 26, 2013]

§ 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; substitution and withdrawal of representative.

(a) Upon filing of a complaint instituting proceedings or filing of an answer to an order or complaint, the party filing shall notify the Commission of the name(s), address(es), telephone number(s), and email address(es) of the person or persons who will represent the party in the pending proceeding. Each person who appears in a representative capacity in a proceeding must deliver a written notice of appearance to the Secretary stating for whom the appearance is made. Such

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notice must indicate whether the representative wishes to be notified of notices, orders and decisions by either email or facsimile transmission. All appearances shall be noted in the record. Motions for leave to intervene must indicate the name(s), address(es), telephone number(s), and email address(es) of the person or persons who will represent the intervenor in the pending proceeding if the motion is granted.

(b) A Notice of Appearance should follow the form set forth in Exhibit No. 1 to this subpart.

(c) An attorney must represent in the Notice of Appearance that he is admitted to practice and in good standing. A non-attorney must describe his or her authority to act in such capacity.

(d) 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 party to the Commission with a Notice of Appearance included. Substitution of counsel or representative will not, by itself, be considered good cause for delaying a proceeding.

(e) If an attorney wishes to withdraw from representing a party, and written consent is not obtained, or if the party is not otherwise represented, the withdrawing attorney shall file an appropriate motion seeking permission to withdraw and provide appropriate reasons for making the motion. Such motion will be decided in consideration of the factors and standards set forth in Rule 1.16 of the American Bar Association's Model Rules of Professional Conduct and by the courts. [Rule 23.]

[64 FR 7807, Feb. 17, 1999, as amended at 78 FR 45069, July 26, 2013]

§ 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).

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

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7807, Feb. 17, 1999]

§ 502.25 Presiding officer.

(a) *Definition.* Presiding officer includes, where applicable, one or more members of the Commission or an administrative law judge.

(b) *Functions and powers.* The officer designated to hear a case shall have the following powers:

(1) *Notices of hearing, subpoenas, depositions, pleadings and scope of proceedings.* To arrange and give notice of hearing; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; and, delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying, or interpreting said order.

(2) *Alternative means of dispute resolution and conferences for settlement or simplification of issues.* To 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 state 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; and 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.

(3) *Hearings, evidence, procedural requests, motions, oaths and affirmations, and witnesses.* To regulate the course of a 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

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produce evidence available to them; rule upon offers of proof and receive relevant, material, reliable, and probative evidence; act upon motions 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 the testimony.

(4) *Time management and other matters.* To 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.

(5) *Exclusion of persons from a hearing.* To exclude any person from a hearing for disrespectful, disorderly, or inappropriate language or conduct.

(c) *Functions and powers pursuant to Reorganization Plan No. 7 of 1961.* All of the functions delegated in subparts A to Q and subpart T 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.]

(d) *Designation of administrative law judge.* An administrative law judge will be designated by the Chief Administrative Law Judge 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.

(e) *Attachment of functions.* In proceedings handled by the Office of Administrative Law Judges, its functions shall attach:

(1) Upon the service by the Commission of a Notice of Filing of Complaint and Assignment of complaint filed pursuant to § 502.62, or § 502.182, or upon referral under subpart T of this part; or

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

(3) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to § 502.271; or

(4) Upon the initiation of a proceeding and ordering of hearing before an administrative law judge pursuant to § 502.63.

(f) *Unavailability.* If the presiding officer assigned to a proceeding becomes unavailable, 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.

(g) *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 25.]

[78 FR 45069, July 26, 2013]

§ 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 practicing before the Commission is expected to conform to the standards of conduct set forth in the American Bar Association's Model Rules of Professional Conduct in addition to the specific requirements of this chapter. [Rule 26.]

[64 FR 7807, Feb. 17, 1999, as amended at 78 FR 45069, July 26, 2013]

§ 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(e) of this chapter.

(2) The application for admission to practice before the Commission by persons not attorneys at law can be downloaded from the Commission's Web site, *www.fmc.gov*, or acquired from the Secretary of the Commission and must be accompanied by a fee as required by §503.43(e) of this chapter. The application should be sent to the Federal Maritime Commission, Washington, DC 20573.

(3) 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. 862.

(b) 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.

(c) The Commission may deny admission to, suspend, or prohibit 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. Non-attorneys who have been admitted to practice before the Commission may be excluded from such practice only after being afforded an opportunity to be heard.

(d) A non-attorney may not practice before the Commission unless and until an application has been approved.

(e) Paragraph (d) of this section 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; 62 FR 6132, Feb. 11, 1997; 64 FR 7807, Feb. 17, 1999; 76 FR 10261, Feb. 24, 2011; 78 FR 45070, July 26, 2013]

§§ 502.29–502.30 [Reserved]

§ 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

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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) *Reporting possible violations.* Possible violations of section 207 of Title 18 of the United States Code, 18 U.S.C. 207, by the Commission's former officers and employees are required to be reported to the Attorney General and the Office of Government Ethics, pursuant to the regulations of the Office of Government Ethics at 5 CFR 2641.103(a) and 5 CFR 2638.603.

(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, as amended at 77 FR 61524, Oct. 10, 2012]

EXHIBIT NO. 1 TO SUBPART B [§§ 502.23, 502.26, 502.27] OF PART 502—NOTICE OF APPEARANCE

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Docket No. _____:
Please enter my appearance in this proceeding as _____ counsel for _____.

Indicate authority for representation [choose one of the following]:

I am an attorney admitted to practice and in good standing before the courts of the State of _____.

I am admitted to practice before the Commission pursuant to 46 CFR 502.27.

I am an officer, director, or regular employee of the party.

I request to be informed of service of notices, orders and decisions in this proceeding by [choose one of the following]:

- electronic mail
- facsimile transmission
- regular mail

[Name] _____

[Address] _____

[Telephone No.] _____

[Fax No.] _____

[Email address] _____

[Signature] _____

[78 FR 45070, July 26, 2013]

Subpart C—Parties

§ 502.41 Parties; how designated.

The term “party,” whenever used in this part, includes any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public

or private organization, government agency, or unit thereof representing said agency. A party who files a complaint under § 502.62 shall be designated as “complainant.” A party against whom relief or other affirmative action is sought in a proceeding commenced under § 502.62 or § 502.73 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 11(c) of the Shipping Act of 1984, 46 U.S.C. 41302(a)–(b), 41307(b), 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 § 502.68 shall be designated as “intervenor.” All parties and persons designated in this section shall be parties to the proceeding. No person other than a party or its representative may introduce evidence or examine witnesses at hearings. [Rule 41].

[78 FR 45070, July 26, 2013]

§ 502.42 Bureau of Enforcement.

The Bureau of Enforcement shall be a party to proceedings upon designation by the Commission or upon leave to intervene granted pursuant to § 502.68. The Bureau’s representative shall be served with copies of all papers, pleadings, and documents in every proceeding in which the Bureau is a party. The Bureau shall actively participate in any proceeding to which it 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. [Rule 42]

[78 FR 45071, July 26, 2013]

§ 502.43 Substitution of parties.

The Commission or presiding officer may order an appropriate substitution of parties in the event of a party’s death, incompetence, transfer of its interest, or other appropriate circumstance. [Rule 43]

[78 FR 45071, July 26, 2013]

Subpart D—Rulemaking

§ 502.51 Initiation of procedure to issue, amend, or repeal a rule.

(a) *By petition.* 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 \$241 filing fee. Replies to such petition shall conform to the requirements of § 502.74.

(b) *By the Commission.* The Commission on its own initiative may initiate the issuance, amendment, or repeal of a rule through notice of proposed rulemaking or advanced notice of proposed rulemaking. [Rule 51.]

[64 FR 7808, Feb. 17, 1999, as amended at 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005]

§ 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 or hearing is required by statute, paragraph (a) of this section shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice of the Commission, or when the Commission for good cause finds (and incorporates the findings and a brief statement of reasons therefor in the rules issued) that notice and public procedure are impracticable, un-

necessary, or contrary to the public interest. [Rule 52]

[49 FR 44369, Nov. 6, 1984, as amended at 78 FR 45071, July 26, 2013]

§ 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 for oral presentation. 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 rulemaking 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.]

(c) 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.

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990; 78 FR 45071, July 26, 2013]

§ 502.54 Contents of rules.

The Commission will incorporate in any publication of proposed or final

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rules a concise and general statement of their basis and purpose. [Rule 54.]

[78 FR 45071, July 26, 2013]

§ 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 that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest;

(b) In the case of rules granting or recognizing exemption or relieving restriction; interpretative rules; or statements of policy.

(c) Interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice. [Rule 55.]

[78 FR 45071, July 26, 2013]

§ 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. [Rule 56.]

[58 FR 38649, July 19, 1993, as amended at 64 FR 7808, Feb. 17, 1999]

§ 502.57 Service by parties of pleadings and other documents.

Service on all prior commenters must be shown when submitting comments or replies beyond the initial round on a notice of proposed rulemaking. A list of all participants may be obtained from the Secretary of the Commission.

[78 FR 45071, July 26, 2013]

Subpart E—Proceedings; Pleadings; Motions; Replies

SOURCE: 77 FR 61524, Oct. 10, 2012, unless otherwise noted.

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§ 502.61 Proceedings.

(a) Any person may commence a proceeding by filing a complaint (Rule 62) for a formal adjudication under normal or shortened procedures (subpart K) or by filing a claim for the informal adjudication of small claims (subpart S). A person may also file a petition for a rulemaking (Rule 51), for an exemption (Rule 74), for a declaratory order (Rule 75), or for other appropriate relief (Rule 76), which becomes a proceeding when the Commission assigns a formal docket number to the petition. The Commission may commence a proceeding for a rulemaking, for an adjudication (including Commission enforcement action under § 502.63), or a non-adjudicatory investigation upon petition or on its own initiative by issuing an appropriate order.

(b) In the order instituting a proceeding or in the notice of filing of complaint and assignment, the Commission must 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.]

§ 502.62 Private party complaints for formal adjudication.

(a) *Filing a complaint for formal adjudication.* (1) A person may file a sworn complaint alleging violation of the Shipping Act of 1984, 46 U.S.C. 40101 *et seq.*

(2) *Form.* Complaints should be drafted in accordance with the rules in this section.

(3) *Content of complaint.* The complaint must be verified and must contain the following:

(i) The name, street address, and email address of each complainant, and the name, address, and email address of each complainant's attorney or representative, the name, address, and, if known, email address of each person against whom complaint is made;

(ii) A recitation of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

(iii) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness

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of the acts or practices alleged to be in violation of the law, and a statement showing that the complainant is entitled to relief;

(iv) A request for the relief and other affirmative action sought; and

(v) Shipping Act violation must be alleged. If the complaint fails to indicate the sections of the Act 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.

(4) *Complaints seeking reparation; statute of limitations.* A complaint may seek reparation (money damages) for injury caused by violation of the Shipping Act of 1984. (See subpart O of this part.)

(i) Where reparation is sought, the complaint must set forth the injury caused by the alleged violation and the amount of alleged damages.

(ii) Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically requested, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding.

(iii) A complaint seeking reparation must be filed within three years after the claim accrues. 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.

(iv) Civil penalties must not be requested and will not be awarded in complaint proceedings.

(5) *Oral hearing.* The complaint should designate whether an oral hearing is requested and the desired place for any oral hearing. The presiding officer will determine whether an oral hearing is necessary.

(6) *Filing fee.* The complaint must be accompanied by remittance of a \$221 filing fee.

(7) A complaint is deemed filed on the date it is received by the Commission.

(b) *Answer to a complaint.* (1) *Time for filing.* A respondent must file with the Commission an answer to the complaint and must serve the answer on complainant as provided in subpart H

of this part within 25 days after the date of service of the complaint by the Commission unless this period has been extended under §502.67 or §502.102, or reduced under §502.103, or unless motion is filed to withdraw or dismiss the complaint, in which latter case, answer must be filed within 10 days after service of an order denying such motion. For good cause shown, the presiding officer may extend the time for filing an answer.

(2) *Contents of answer.* The answer must be verified and must contain the following:

(i) The name, address, and email address of each respondent, and the name, address, and email address of each respondent's attorney or representative;

(ii) Admission or denial of each alleged violation of the Shipping Act;

(iii) A clear and concise statement of each ground of defense and specific admission, denial, or explanation of facts alleged in the complaint, or, if respondent is without knowledge or information thereof, a statement to that effect; and

(iv) Any affirmative defenses, including allegations of any additional facts on which the affirmative defenses are based.

(3) *Oral hearing.* The answer should designate whether an oral hearing is requested and the desired place for such hearing. The presiding officer will determine whether an oral hearing is necessary.

(4) *Counterclaims, crossclaims, and third-party complaints.* In addition to filing an answer to a complaint, a respondent may include in the answer a counterclaim against the complainant, a crossclaim against another respondent, or a third-party complaint. A counterclaim, a crossclaim, or a third-party complaint must allege and be limited to violations of the Shipping Act within the jurisdiction of the Commission. The service and filing of a counterclaim, a crossclaim, or a third-party complaint and answers or replies thereto are governed by the rules and requirements of this section for the filing of complaints and answers.

(5) A reply to an answer may not be filed unless ordered by the presiding officer.

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(6) *Effect of failure to file answer.* (i) Failure of a party to file an answer to a complaint, counterclaim, crossclaim, or third-party complaint within the time provided will be deemed to constitute a waiver of that party's right to appear and contest the allegations of the complaint, counterclaim, crossclaim, or third-party complaint to which it has not filed an answer and to authorize the presiding officer to enter an initial decision on default as provided for in 46 CFR 502.65. Well pleaded factual allegations in the complaint not answered or addressed will be deemed to be admitted.

(ii) A party may make a motion for initial decision on default. [Rule 62.]

[77 FR 61524, Oct. 10, 2012; 77 FR 64758, Oct. 23, 2012]

§ 502.63 Commission enforcement action.

(a) The Commission may issue an Order of Investigation and Hearing commencing an adjudicatory investigation against one or more respondents alleging one or more violations of the statutes that it administers.

(b) *Contents of Order of Investigation and Hearing.* The Order of Investigation and Hearing must contain the following:

(1) The name, street address, and, if known, email address of each person against whom violations are alleged;

(2) A recitation of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

(3) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the acts and practices alleged to be in violation of the law;

(4) Notice of penalties, cease and desist order, or other affirmative action sought; and

(5) Notice of the requirement to file an answer and a statement of the consequences of failure to file an answer.

(c) *Answer to Order of Investigation and Hearing.* (1) *Time for filing.* A respondent must file with the Commission an answer to the Order of Investigation and Hearing and serve a copy of the answer on the Bureau of Enforcement within 25 days after being

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served with the Order of Investigation and Hearing unless this period has been extended under § 502.67 or § 502.102, or reduced under § 502.103, or unless motion is filed to withdraw or dismiss the Order of Investigation and Hearing, in which latter case, answer must be filed within 10 days after service of an order denying such motion. For good cause shown, the presiding officer may extend the time for filing an answer.

(2) *Contents of answer.* The answer must be verified and must contain the following:

(i) The name, address, and email address of each respondent, and the name, address, and email address of each respondent's attorney or representative;

(ii) Admission or denial of each alleged violation of the Shipping Act;

(iii) A clear and concise statement of each ground of defense and specific admission, denial, or explanation of facts alleged in the complaint, or, if respondent is without knowledge or information thereof, a statement to that effect; and

(iv) Any affirmative defenses, including allegations of any additional facts on which the affirmative defenses are based.

(3) *Oral hearing.* The answer must indicate whether an oral hearing is requested and the desired place for such hearing. The presiding officer will determine whether an oral hearing is necessary.

(4) *Effect of failure to file answer.* (i) Failure of a respondent to file an answer to an Order of Investigation and Hearing within the time provided will be deemed to constitute a waiver of the respondent's right to appear and contest the allegations in the Order of Investigation and Hearing and to authorize the presiding officer to enter a decision on default as provided for in 46 CFR 502.65. Well pleaded factual allegations in the Order of Investigation and Hearing not answered or addressed will be deemed to be admitted.

(ii) The Bureau of Enforcement may make a motion for decision on default. [Rule 63.]

§ 502.64 Alternative dispute resolution.

(a) *Mandatory preliminary conference.* (1) *Participation.* Subsequent to service

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of a Complaint, parties must participate in a preliminary conference with the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) as to whether the matter may be resolved through mediation. The preliminary conference may be conducted either in person or via telephone, video conference, or other forum.

(2) *Timing.* Within fifteen (15) days of the filing of an answer, the parties must contact the Director of CADRS to schedule the preliminary conference. The Director of CADRS or his/her designees will conduct the preliminary conference and may confer with each party separately at any time.

(b) *Continued availability of dispute resolution services to resolve procedural and other disputes.* Pursuant to subpart U of this part, the parties mutually may agree, at any time prior to the termination of a Commission proceeding, to initiate or reopen a mediation proceeding to explore resolution of procedural or substantive issues.

(c) *Proceeding not stayed during dispute resolution process.* Unless otherwise ordered by the presiding officer, a mediation proceeding does not stay or delay the procedural time requirements set forth by rule or order of the presiding officer.

(d) *Confidentiality.* The preliminary conference will be confidential. [Rule 64.]

§ 502.65 Decision on default.

(a) A party to a proceeding may be deemed to be in default if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the Commission or the presiding officer.

(b) When a party is found to be in default, the Commission or the presiding officer may issue a decision on default upon consideration of the record, including the complaint or Order of Investigation and Hearing.

(c) The presiding officer may require additional information or clarification when needed to issue a decision on default, including a determination of the amount of reparations or civil penalties where applicable.

(d) A respondent who has defaulted may file with the Commission a petition to set aside a decision on default. Such a petition must be made within 22 days of the service date of the decision, state in detail the reasons for failure to appear or defend, and specify the nature of the proposed defense. In order to prevent injustice, the Commission may for good cause shown set aside a decision on default. [Rule 65.]

§ 502.66 Amendments or supplements to pleadings.

(a) Amendments or supplements to any pleading (complaint, Order of Investigation and Hearing, counterclaim, crossclaim, third-party complaint, and answers thereto) will be permitted or rejected, either in the discretion of the Commission or presiding officer. No amendment will be allowed that 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 and § 502.69 of this part, 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 must also be verified. [Rule 66.]

§ 502.67 Motion for more definite statement.

If a pleading (including a complaint, counterclaim, crossclaim, or third-party complaint filed pursuant to § 502.62) to which a responsive pleading is permitted is so vague or ambiguous

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that a party cannot reasonably prepare a response, the party may move for a more definite statement before filing a responsive pleading. The motion must be filed within 15 days of the pleading and must 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 sets, the presiding officer may strike the pleading to which the motion was directed or issue any other appropriate order. If the motion is denied, the time for responding to the pleading must be extended to a date 10 days after service of the notice of denial. [Rule 67.]

§ 502.68 Motion for leave to intervene.

(a) *Filing.* A motion for leave to intervene may be filed in any proceeding.

(b) *Procedure for intervention.* (1) Upon request, the Commission will furnish a service list to any member of the public pursuant to part 503 of this chapter.

(2) The motion must:

(i) Comply with all applicable provisions of subpart A of this part;

(ii) Indicate the type of intervention sought;

(iii) Describe the interest and position of the person seeking intervention, and address the grounds for intervention set forth in paragraph (c) of this section;

(iv) Describe the nature and extent of its proposed participation, including the use of discovery, presentation of evidence, and examination of witnesses;

(v) State the basis for affirmative relief, if affirmative relief is sought; and

(vi) Be served on existing parties by the person seeking intervention pursuant to subpart H of this part.

(3) A response to a motion to intervene must be served and filed within 15 days after the date of service of the motion.

(c)(1) *Intervention of right.* The presiding officer or Commission must permit anyone to intervene who claims an interest relating to the property or transaction that is subject of the proceeding, and is so situated that disposition of the proceeding may as a practical matter impair or impede the abil-

ity of such person to protect its interest, unless existing parties adequately represent that interest.

(2) *Permissive intervention.* (i) *In general.* The presiding officer or Commission may permit anyone to intervene who shows that a common issue of law or fact exists between such person's interest and the subject matter of the proceeding; that intervention would not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights, or be duplicative of the positions of any existing party; and that such person's participation may reasonably be expected to assist in the development of a sound record.

(ii) *By a government department, agency, or the Commission's Bureau of Enforcement.* The presiding officer or Commission may permit intervention by a Federal or State government department or agency or the Commission's Bureau of Enforcement upon a showing that its expertise is relevant to one or more issues involved in the proceeding and may assist in the consideration of those issues.

(3) The timeliness of the motion will also be considered in determining whether a motion will be granted under paragraph (b)(2) of this section and should be filed no later than 30 days after publication in the FEDERAL REGISTER of the Commission's order instituting the proceeding or the notice of the filing of the complaint. Motions filed after that date must show good cause for the failure to file within the 30-day period.

(d) *Use of discovery by an intervenor.*

(1) Absent good cause shown, an intervenor desiring to utilize the discovery procedures provided in subpart L must commence doing so no more than 15 days after its motion for leave to intervene has been granted.

(2) The Commission or presiding officer may impose reasonable limitations on an intervenor's participation in order to:

(i) Restrict irrelevant or duplicative discovery, evidence, or argument;

(ii) Have common interests represented by a spokesperson; and

(iii) Retain authority to determine priorities and control the course of the proceeding.

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(3) The use of discovery procedures by an intervenor whose motion was filed more than 30 days after publication in the FEDERAL REGISTER of the Commission's order instituting the proceeding or the notice of the filing of the complaint will not be allowed if the presiding officer determines that the use of the discovery by the intervenor will unduly delay the proceeding. [Rule 68.]

§ 502.69 Motions.

(a) In any adjudication, an application or request for an order or ruling not otherwise specifically provided for in this part must 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 must 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 must be referred to the Commission. If the proceeding is not before the presiding officer, motions must be designated as *petitions* and must be addressed to and ruled upon by the Commission.

(b) Motions must be in writing, except that a motion made at a hearing may be sufficient if stated orally upon the record.

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

(d) A repetitious motion will not be entertained.

(e) All written motions must 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 supporting the relief requested; and must conform with the requirements of subpart H of this part.

(f) Any party may file and serve a response to any written motion, pleading, petition, application, etc., permitted under this part except as otherwise provided respecting answers (§502.62), shortened procedure (subpart K of this part), briefs (§502.221), exceptions (§502.227), and reply to petitions for attorney fees under the Equal Access to Justice Act (§502.503(b)(1)).

(g) *Dispositive and non-dispositive motions defined.* For the purpose of these rules, *dispositive motion* means a motion for decision on the pleadings; motion for summary decision or partial summary decision; motion to dismiss all or part of a proceeding or party to a proceeding; motion for involuntary dismissal; motion for initial decision on default; or any other motion for a final determination of all or part of a proceeding. All other motions, including all motions related to discovery, are non-dispositive motions. [Rule 69.]

§ 502.70 Procedure for dispositive motions.

(a) A dispositive motion as defined in §502.69(g) of this subpart must include a concise statement of the legal basis of the motion with citation to legal authority and a statement of material facts with exhibits as appropriate.

(b) A response to a dispositive motion must be served and filed within 15 days after the date of service of the motion. The response must include a concise statement of the legal basis of the response with citation to legal authority and specific responses to any statements of material facts with exhibits as appropriate.

(c) A reply to the response to a dispositive motion may be filed within 7 days after the date of service of the response to the motion. A reply may not raise new grounds for relief or present matters that do not relate to the response and must not reargue points made in the opening motion.

(d) The non-moving party may not file any further reply unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.

(e) *Page limits.* Neither the motion nor the response may exceed 30 pages, excluding exhibits or appendices, without leave of the presiding officer. A reply may not exceed 15 pages. [Rule 70.]

§ 502.71 Procedure for non-dispositive motions.

(a) *Duty to confer.* Before filing a non-dispositive motion as defined in §502.69(g) of this subpart, the parties must attempt to discuss the anticipated motion with each other in a good

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faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The moving party must state within the body of the motion what attempt was made or that the discussion occurred and whether the motion is opposed.

(b) *Response to a non-dispositive motion.* A response to a non-dispositive motion must be served and filed within 7 days after the date of service of the motion.

(c) *Response replies.* The moving party may not file a reply to a response to a non-dispositive motion unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.

(d) *Page limits.* Neither the motion nor the response may exceed 10 pages, excluding exhibits or appendices, without leave of the presiding officer. [Rule 71.]

§ 502.72 Dismissals.

(a) *Voluntary dismissal.* (1) *By the complainant.* The complainant may dismiss an action without an order from the presiding officer by filing a notice of dismissal before the opposing party serves either an answer, a motion to dismiss, or a motion for summary decision; or a stipulation of dismissal signed by all parties who have appeared. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) *By order of the presiding officer.* Except as provided in paragraph (a)(1) of this section, an action may be dismissed at the complainant's request only by order of the presiding officer or the Commission, on terms the presiding officer considers proper. If a respondent has pleaded a counterclaim before being served with the complainant's motion to dismiss, the action may be dismissed over the respondent's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) *Involuntary dismissal; effect.* If the complainant fails to prosecute or to comply with these rules or an order in the proceeding, a respondent may move to dismiss the action or any claim

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against it. Unless the dismissal order states otherwise, a dismissal under this subpart, except one for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

(c) *Dismissing a counterclaim, crossclaim, or third-party claim.* This rule applies to dismissals of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under this rule must be made before a responsive pleading is served. [Rule 72.]

§ 502.73 Order to show cause.

The Commission may institute a proceeding by order to show cause. The order must be served upon all persons named therein, must include the information specified in § 502.143, must require the person named therein to answer, and may require such person to appear at a specified time and place and present evidence upon the matters specified. [Rule 73.]

§ 502.74 Exemption procedures—general.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or regulation exempt for the future any class of agreements between persons subject to the Shipping Act of 1984 or any specified activity of those persons from any requirement of the Act if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.

(b) *Application for exemption.* Any person may petition the Commission for an exemption or revocation of an exemption of any class of agreements or an individual agreement or any specified activity pursuant to section 16 of the Shipping Act of 1984 (46 U.S.C. 40103). A petition for exemption must state the particular requirement of the Shipping Act of 1984 for which exemption is sought. The petition must also include a statement of the reasons why an exemption should be granted or revoked, must provide information relevant to any finding required by the Act and must comply with § 502.76. Where a petition for exemption of an

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individual agreement is made, the application must include a copy of the agreement. Unless a petition specifically requests an exemption by regulation, the Commission must evaluate the petition as a request for an exemption by order.

(c) *Participation by interested persons.* No order or regulation 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.

(d) FEDERAL REGISTER notice. Notice of any proposed exemption or revocation of exemption, whether upon petition or the Commission's own motion, must be published in the FEDERAL REGISTER. The notice must include when applicable:

(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 or specified activity for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the petition 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 proposal. [Rule 74.]

§ 502.75 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 must: 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 must be accompanied by remittance of a \$241 filing fee.

(b) Petitions under this section must be limited to matters involving con-

duct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section must 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 11 of the Shipping Act of 1984 (46 U.S.C. 41301-41302, 41305-41307(a)) and § 502.62, or by filing of a petition for investigation under § 502.76.

(c) Petitions under this section must 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) Responses to the petition must contain the complete factual and legal presentation of the responding party as to the desired resolution, or a detailed explanation why such can only be developed through discovery or evidentiary hearing. Responses must conform to the requirements of § 502.69 and must 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 responses. Requests must 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 must be published in the FEDERAL REGISTER. The notice will indicate the time for filing of responses to the petition. If the controversy or uncertainty is one of general public interest, and not limited to specifically

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named persons, opportunity for response 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 § 502.68.

(3) Petitions for leave to intervene must be submitted on or before the response date and must be accompanied by intervenor's complete response 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 75.]

§ 502.76 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, must be by written petition, which must state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, must cite by appropriate reference the statutory provisions or other authority relied upon for relief, must be served upon all parties named therein, and must conform otherwise to the requirements of subpart H of this part. Responses thereto must conform to the requirements of § 502.67.

(b) Petitions must be accompanied by remittance of a \$241 filing fee. [Rule 76.]

§ 502.77 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under section 5(e) of the Shipping Act of 1984 (46 U.S.C. 40301(e), 40305), the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued, which date

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will not be 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 must 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 must be filed with the Secretary of the Commission for service pursuant to § 502.113. Answers or objections to discovery requests must 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, must be filed and served no later than 15 days after date of service of the initial decision. Replies thereto must be filed and served no later than 15 days after date of service of exceptions. In the absence of exceptions, the decision of the presiding officer must 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. [Rule 77.]

§ 502.78 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 must 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 must be limited to questions of law or policy.

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

(c) Except as otherwise permitted by the Commission or the presiding officer, an amicus curiae must file its brief no later than 7 days after the initial brief of the party it supports is received at the Commission. An amicus curiae that is not supporting either party must file its brief no later than 7 days after the initial brief of the first party filing a brief is received at the

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Commission. The Commission or the presiding officer must grant leave for a later filing only for cause shown, in which event the period within which an opposing party may answer must 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 78.]

§ 502.79 Consolidation of proceedings.

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

[78 FR 45071, July 26, 2013]

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) As soon as practicable after the commencement of any proceeding, the presiding judge shall direct the parties or their representatives to consider the use of alternative dispute resolution, including but not limited to mediation, and may direct the parties or their representatives to consult with the Federal Maritime Commission Alternative Dispute Resolution Specialist about the feasibility of alternative dispute resolution.

(e) Any party may request that a mediator or other neutral be appointed to assist the parties in reaching a settle-

ment. If such a request or suggestion is made and is not opposed, the presiding judge will appoint a mediator or other neutral who is acceptable to all parties, coordinating with the Federal Maritime Commission Alternative Dispute Resolution Specialist. The mediator or other neutral shall convene and conduct one or more mediation or other sessions with the parties and shall inform the presiding judge, within the time prescribed by the presiding judge, whether the dispute resolution proceeding resulted in a resolution or not, and may make 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. All such dispute resolution proceedings shall be subject to the provisions of subpart U.

(f) Any party may request that a 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 settlement judge who is acceptable to all parties. The settlement judge shall convene and preside over conferences and settlement negotiations and shall report to the presiding 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. [Rule 91].

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7808, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001]

§ 502.92 [Reserved]

§ 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

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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 dispute resolution would be appropriate or useful for the disposition of the proceeding whether or not there has been previous consideration of such use.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7808, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001]

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§ 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

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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 OF PART
502 [RESERVED]

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.

(a) 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 and be submitted at least five (5) days before the scheduled date for filing. Except for good cause shown, failure to meet this time requirement may result in summary rejection of the request.

(b) Such motions will be granted only under exceptional circumstances duly demonstrated in the request, and 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.

(c) Upon motion made after the expiration of the scheduled date, the filing may be permitted where reasonable grounds are found for the failure to file.

(d) Replies to such motions for enlargement of time shall conform to the requirements of § 502.74. [Rule 102.]

[64 FR 7808, Feb. 17, 1999]

§ 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. Such motions must be received, whether orally or in writing, at least five (5) days before the scheduled date for hearing. Except for good cause shown, failure to meet this requirement may result in summary rejection of the request. Replies to such motions shall conform to the requirements of § 502.74. [Rule 104.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7809, Feb. 17, 1999]

§ 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 and may rule ex parte on such requests. [Rule 105.]

[64 FR 7809, Feb. 17, 1999]

Subpart H—Form, Execution, and Service of Documents

§§ 502.111–502.112 [Reserved]

§ 502.113 Service by the Commission.

(a) Complaints filed pursuant to § 502.62, (including any accompanying

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discovery requests initiated pursuant to § 502.201(b)), 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.

(b) The complainant may also effect proper service, in which case an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service.

(c) 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.

(d) The presiding officer may dismiss a complaint that has not been served within thirty (30) days after the complaint was filed. [Rule 113.]

[64 FR 7809, Feb. 17, 1999]

§ 502.114 Service by parties of pleadings and other documents.

(a) Except as otherwise specifically provided by the rules in this part, all pleadings, documents, and papers of every kind (except requests for subpoenas, documents served by the Commission under § 502.113, and documents submitted at a hearing or prehearing conference) in proceedings before the Commission under the rules in this part 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; by courier; or by facsimile transmission if agreed by both parties prior to service.

(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 dis-

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position of petitions for rulemaking (rule 51), petitions for declaratory order (rule 68), petitions general (rule 69), notices of proposed rulemaking (rule 52), proceedings under section 19 of the Merchant Marine Act, 1920, (46 U.S.C. 42101) (part 550), and proceedings under section 13(b)(6) of the Shipping Act of 1984 (46 U.S.C. 41108(d)) (part 560). A list of all participants may be obtained from the Secretary of the Commission.

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990; 61 FR 66617, Dec. 18, 1996; 64 FR 7809, Feb. 17, 1999; 74 FR 50716, Oct. 1, 2009; 76 FR 10262, Feb. 24, 2011]

§ 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 date when matter served is deposited in the United States mail, delivered to a courier, delivered in person, or transmitted by facsimile, as the case may be. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 116.]

[64 FR 7809, Feb. 17, 1999]

§ 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

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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)–(b)(3) [Reserved]

(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 §502.157 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; 61 FR 66617, Dec. 18, 1996; 64 FR 7809, Feb. 17, 1999; 76 FR 10262, Feb. 24, 2011]

Subpart I—Subpoenas

§ 502.131 Requests; issuance.

Subpoenas 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 subpoenas must be submitted in writing to the Office of Administrative Law Judges. The party requesting the subpoena shall tender an original and one copy of such subpoena. Where it appears that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the administrative law judge may in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. [Rule 131.]

[76 FR 10262, Feb. 24, 2011]

§ 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 subpoena for attendance of a witness or a subpoena for production of evidence, but in any event at or before the time specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may, by motion with notice to the party requesting the subpoena, petition the presiding officer to quash or modify the subpoena.

(b) If served at the hearing, the person to whom the subpoena 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 subpoena.

(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 subpoena shall arrange that it be served at least twenty (20) days prior to the date specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may move to quash or modify the subpoena within ten (10) days after service of the subpoena, and a reply to such motion shall be served within five (5) days thereafter. [Rule 132.]

[49 FR 44369, Nov. 6, 1984, as amended at 76 FR 10262, Feb. 24, 2011]

§ 502.133 Attendance and mileage fees.

Witnesses summoned by subpoena to a hearing or deposition 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.]

[64 FR 7809, Feb. 17, 1999, as amended at 76 FR 10262, Feb. 24, 2011]

§ 502.134 Service of subpoenas.

If service of a subpoena 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

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manner in which service is made, and return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, the original subpoena 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 subpoena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear. [Rule 134.]

[49 FR 44369, Nov. 6, 1984, as amended at 76 FR 10262, Feb. 24, 2011]

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

(a) A subpoena 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 subpoena 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 subpoena 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 subpoenaed 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

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the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 135.]

[49 FR 44369, Nov. 6, 1984, as amended at 76 FR 10262, Feb. 24, 2011]

§ 502.136 Enforcement.

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

[49 FR 44369, Nov. 6, 1984, as amended at 76 FR 10262, Feb. 24, 2011]

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 § 502.113, 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, as amended at 64 FR 7810, Feb. 17, 1999]

§ 502.144 Notice of time and place of hearing; postponement of hearing.

(a) 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. Notice may be served by mail, facsimile transmission, or electronic mail.

(b) Motions for postponement of any hearing date shall be filed in accordance with § 502.104. [Rule 144.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7810, Feb. 17, 1999; 64 FR 23551, May 3, 1999]

§§ 502.145–502.149 [Reserved]

§ 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

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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.

In all cases, as prescribed by the Administrative Procedure Act, 5 U.S.C. 556(d), the burden of proof shall be on the proponent of the rule or order. [Rule 155.]

[61 FR 66617, Dec. 18, 1996]

§ 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

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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. Written 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.

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(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 indispensable 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.]

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§ 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,

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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 \$221 filing fee. [Rule 182.]

[49 FR 44369, Nov. 6, 1984, as amended at 59 FR 59170, Nov. 16, 1994; 63 FR 50535, Sept. 22, 1998; 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005]

§ 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.

Intervenors 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—Disclosures and Discovery

SOURCE: 77 FR 61529, Oct. 10, 2012, unless otherwise noted.

§ 502.201 Duty to disclose; general provisions governing discovery.

(a) *Applicability.* Unless otherwise stated in subpart S, T, or any other subpart of this part, the procedures described in this subpart are available in all adjudicatory proceedings under the Shipping Act of 1984.

(b) *Initial disclosures.* Except as otherwise stipulated or ordered by the Commission or presiding officer, and except as provided in this subpart related to disclosure of expert testimony, all parties must, within 7 days of service of a respondent's answer to the complaint or Order of Investigation and Hearing and without awaiting a discovery request, provide to each other:

(1) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(2) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing

party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(3) An estimate of any damages claimed by the disclosing party who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which the estimate is based, including materials bearing on the nature and extent of injuries suffered.

(c) *For parties served or joined later.* A party that is first served or otherwise joined after the answer is made must make the initial disclosures within 5 days after an order of intervention is granted, unless a different time is set by stipulation or order of presiding officer. All parties must also produce to the late-joined party any initial disclosures previously made.

(d) *Disclosure of expert testimony.* (1) *In general.* A party must disclose to the other parties the identity of any witness it may use in the proceeding to present evidence as an expert.

(2) *Witnesses who are required to provide a written report.* Unless otherwise stipulated or ordered by the presiding officer, if the witness is one retained or specially employed to provide expert testimony in the proceeding or one whose duties as the party's employee regularly involve giving expert testimony, the disclosure must be accompanied by a written report, prepared and signed by the witness. The report must contain:

(i) A complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) The facts or data considered by the witness in forming them;

(iii) Any exhibits that will be used to summarize or support them;

(iv) The witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) A list of all other proceedings or cases in which, during the previous 4 years, the witness testified as an expert in a trial, an administrative proceeding, or by deposition; and

(vi) A statement of the compensation to be paid for the study and testimony in the proceeding.

(3) *Witnesses who are not required to provide a written report.* Unless otherwise stipulated or ordered by the presiding officer, if the witness is not required to provide a written report under paragraph (d)(2) of this section, the disclosure must state:

(i) The subject matter on which the witness is expected to present evidence as an expert; and

(ii) Summary of the facts and opinions to which the witness is expected to testify.

(4) *Time to disclose expert testimony.* The time for disclosure of expert testimony must be addressed by the parties when they confer as provided in paragraph (h) of this section and, if applicable, must be included in the proposed discovery schedule submitted to the presiding officer.

(e) *Scope of discovery and limits.* (1) Unless otherwise limited by the presiding officer, or as otherwise provided in this subpart, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the presiding officer may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations on frequency and extent.*

(i) *Specific limitations on electronically stored information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the presiding officer may nonetheless order discovery from such sources if the requesting party shows good cause. The presiding officer may specify conditions for the discovery.

(ii) *When required.* On motion or on its own, the presiding officer may limit the frequency or extent of discovery otherwise allowed by these rules if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(C) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the proceeding, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(f) *Scope of discovery and limits—experts.* (1) A party may depose any person who has been identified as an expert whose opinions may be presented in a proceeding. If a report is required of the witness, the deposition may be conducted only after the report is provided.

(2) Drafts of any report or disclosure required by these rules are not discoverable regardless of the form in which the draft is recorded.

(3) Communications between the party's attorney and any expert witness required to provide a report are not discoverable regardless of the form of communications, except to the extent that the communications relate to compensation for the expert's study or testimony; identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(4) A party may not by interrogatories or deposition discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for a proceeding and who is not expected to be presented as a witness; provided, however, that the presiding officer may permit such discovery and may impose

such conditions as deemed appropriate upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(g) *Completion of discovery.* Discovery must be completed within 150 days of the service of a respondent's answer to the complaint or Order of Investigation and Hearing.

(h) *Duty of the parties to confer.* In all proceedings in which the procedures of this subpart are used, it is the duty of the parties to confer within 15 days after receipt of a respondent's answer to a complaint or Order of Investigation and Hearing in order to: establish a schedule for the completion of discovery, including disclosures and discovery related to experts, within the 150-day period prescribed in paragraph (g) 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 parties must submit the schedule to the presiding officer not later than 5 days after the conference. Nothing in this rule should be construed to preclude the parties from conducting discovery and conferring at an earlier date.

(i)(1) *Conferences by order of the presiding officer.* 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.

(2) *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. 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.

(j) *Protective orders.* (1) *In general.* A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in

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good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without Commission or presiding officer action. The Commission or presiding officer may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) Forbidding the disclosure or discovery;

(ii) Specifying terms, including time and place, for the disclosure or discovery;

(iii) Prescribing a discovery method other than the one selected by the party seeking discovery;

(iv) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(v) Designating the persons who may be present while the discovery is conducted;

(vi) Requiring that a deposition be sealed and opened only on Commission or presiding officer order;

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

(viii) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Commission or presiding officer directs.

(2) *Ordering discovery.* If a motion for a protective order is denied in whole or in part, the Commission or presiding officer may, on just terms, order that any party or person provide or permit discovery.

(k) *Supplementing responses.* A party who has made a disclosure under paragraph (b) or (d) of this section, or who has responded to an interrogatory, request for production, or request for admission, must supplement or correct its disclosure or response:

(1) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in written communication; or

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(2) As ordered by the presiding officer.

(1) *Stipulations.* Unless the presiding officer orders otherwise, the parties may stipulate that other procedures governing or limiting discovery be modified, but a stipulation extending the time for any form of discovery must have presiding officer's approval if it would interfere with the time set for completing discovery, for adjudicating a motion, or for hearing. [Rule 201.]

[49 FR 44369, Nov. 6, 1984, as amended at 78 FR 45071, July 26, 2013]

§ 502.202 Persons before whom depositions may be taken.

(a) *Within the United States.* (1) *In general.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(i) An officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(ii) A person appointed by the Commission or the presiding officer to administer oaths and take testimony.

(b) *In a foreign country.* (1) *In general.* A deposition may be taken in a foreign country:

(i) Under an applicable treaty or convention;

(ii) under a letter of request, whether or not captioned a "letter rogatory";

(iii) On notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(iv) Before a person authorized by the Commission or the presiding officer to administer any necessary oath and take testimony.

(2) *Issuing a letter of request or an authorization.* A letter of request, an authorization, or both may be issued:

(i) On appropriate terms after an application and notice of it; and

(ii) Without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a request, notice, or authorization.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that

treaty or convention. A letter of request may be addressed “To the Appropriate Authority in [name of country].” A deposition notice or an authorization must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of request—admitting evidence.* Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) *Disqualification.* A deposition must not be taken before a person who is any party’s relative, employee, or attorney; who is related to or employed by any party’s attorney; or who is financially interested in the action. [Rule 202.]

§ 502.203 Depositions by oral examination.

(a) *When a deposition may be taken.* (1) *Without leave.* A party may, by oral questions, depose any person, including a party, without leave of the presiding officer except as provided in § 502.203(a)(2). The deponent’s attendance may be compelled by subpoena under subpart I of this part.

(2) *With leave.* A party must obtain leave of the presiding officer, if the parties have not stipulated to the deposition and:

(i) The deposition would result in more than 20 depositions being taken under this rule or § 502.204 by any party; or

(ii) The deponent has already been deposed in the case.

(b) *Notice of the deposition; other formal requirements.* (1) *Notice in general.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent’s name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for

production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under § 502.206 to produce documents and tangible things at the deposition.

(3) *Method of recording.* (i) *Method stated in the notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the presiding officer orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(ii) *Additional method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the presiding officer orders otherwise.

(4) *By remote means.* The parties may stipulate, or the presiding officer may on motion order, that a deposition be taken by telephone or other remote means.

(5) *Officer’s duties.* (i) *Before the deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under § 502.202. The officer must begin the deposition with an on-the-record statement that includes:

(A) The officer’s name and business address;

(B) The date, time, and place of the deposition;

(C) The deponent’s name;

(D) The officer’s administration of the oath or affirmation to the deponent; and

(E) The identity of all persons present.

(ii) *Conducting the deposition; avoiding distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in § 502.203(b)(5)(i)(A) through (C) at the beginning of each unit of the recording medium. The deponent’s and attorneys’ appearance or demeanor must not be distorted through recording techniques.

(iii) *After the deposition.* At the end of a deposition, the officer must state on

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the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or subpoena directed to an organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing representatives, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) *Examination and cross-examination; record of the examination; objections; written questions.* (1) *Examination and cross-examination.* The examination and cross-examination of a deponent proceed as they would at hearing under the provisions of § 502.154. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under § 502.203(b)(3). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition, must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the pre-

siding officer, or to present a motion under § 502.203(d)(2).

(3) *Participating through written questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) *Duration; sanction; motion to terminate or limit.* (1) *Duration.* Unless otherwise stipulated or ordered by the presiding officer, a deposition is limited to 1 day of 7 hours. The presiding officer must allow additional time consistent with § 502.201(e)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Motion to terminate or limit.* (i) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed with the presiding officer. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(ii) *Order.* The presiding officer may order that the deposition be terminated or may limit its scope and manner as provided in § 502.201(j). If terminated, the deposition may be resumed only by order of the Commission or presiding officer.

(e) *Review by the witness; changes.* (1) *Review; statement of changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 15 days after being notified by the officer that the transcript or recording is available in which:

(i) To review the transcript or recording; and

(ii) If there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes indicated in the officer's certificate.* The officer must note in the certificate prescribed by § 502.203(f)(1) whether a review was requested and, if

so, must attach any changes the deponent makes during the 15-day period.

(f) *Certification and delivery; exhibits; copies of the transcript or recording.* (1) *Certification and delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition, transcript or recording accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the presiding officer orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and tangible things.* (i) *Originals and copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(A) Offer copies to be marked, attached to the deposition, and then used as originals, after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(B) Give all parties a fair opportunity to inspect and copy the originals after they are marked, in which event the originals may be used as if attached to the deposition.

(ii) *Order regarding the originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the transcript or recording.* Unless otherwise stipulated or ordered by the presiding officer, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent. [Rule 203.]

§ 502.204 Depositions by written questions.

(a) *When a deposition may be taken.* (1) *Without leave.* A party may, by written questions, depose any person, including a party, without leave of the presiding officer except as provided in paragraph (a)(2) of this section. The deponent's attendance may be compelled by subpoena under subpart I of this part.

(2) *With leave.* A party must obtain leave of the presiding officer, if the parties have not stipulated to the deposition and:

(i) The deposition would result in more than 20 depositions being taken under this rule or §502.203 by any party;

(ii) The deponent has already been deposed in the case.

(3) *Service; required notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions directed to an organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with §502.203(b)(6).

(5) *Questions from other parties.* Any questions to the deponent from other parties must be served on all parties as follows: Cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The presiding officer may, for good cause, extend or shorten these times.

(b) *Delivery to the officer; officer's duties.* The party who noticed the deposition must deliver to the officer before whom the deposition will be taken a copy of all the questions served and of the notice. The officer must promptly proceed to:

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(1) Take the deponent's testimony in response to the questions;

(2) Prepare and certify the deposition; and

(3) Send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of completion or filing.* (1) *Completion.* The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* A party who files the deposition must promptly notify all other parties of the filing. [Rule 204.]

§ 502.205 Interrogatories to parties.

(a) *In general.* (1) *Number.* Unless otherwise stipulated or ordered by the presiding officer, a party may serve on any other party no more than 50 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with § 502.201(e)(2).

(2) *Scope.* An interrogatory may relate to any matter that may be inquired into under § 502.201(e) and (f). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that the interrogatory need not be answered until designated discovery is complete, or until a prehearing conference or some other time.

(b) *Answers and objections.* (1) *Responding party.* The interrogatories must be answered:

(i) By the party to whom they are directed; or

(ii) If that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or representative, who must furnish the information available to the party.

(2) *Time to respond.* The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to as provided in § 502.201(1) of this subpart or be ordered by the presiding officer.

(3) *Answering each interrogatory.* Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

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(4) *Objections.* The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the presiding officer, for good cause, excuses the failure.

(5) *Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) *Use.* An answer to an interrogatory may be used to the extent allowed by the rules in this part.

(d) *Option to produce business records.* If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) Specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) Giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries. [Rule 205.]

§ 502.206 Producing documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes.

(a) *In general.* A party may serve on any other party a request within the scope of § 502.201(e) and (f):

(1) To produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(i) Any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(ii) Any designated tangible things; or

(2) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) *Procedure.* (1) *Contents of the request.* The request:

(i) Must describe with reasonable particularity each item or category of items to be inspected;

(ii) Must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(iii) May specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and objections.* (i) *Time to respond.* The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to as provided in §502.201(1) of this subpart or be ordered by the presiding officer.

(ii) *Responding to each item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(iii) *Objections.* An objection to part of a request must specify the part and permit inspection of the rest.

(iv) *Responding to a request for production of electronically stored information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form was specified in the request, the party must state the form or forms it intends to use.

(v) *Producing the documents or electronically stored information.* Unless otherwise stipulated or ordered by the presiding officer, these procedures apply to producing documents or electronically stored information:

(A) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(B) If a request does not specify a form for producing electronically stored information, a party must

produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(C) A party need not produce the same electronically stored information in more than one form.

(c) *Nonparties.* By subpoena under subpart I of this part, a nonparty may be compelled to produce documents and tangible things or to permit an inspection. [Rule 206.]

§ 502.207 Requests for admission.

(a) *Scope and procedure.* (1) *Scope.* A party may serve on any other party a written request to admit, for the purposes of the pending action only, the truth of any nonprivileged relevant matters relating to facts, the application of law to fact, or opinions about either, and the genuineness of any described documents.

(2) *Form; copies of documents.* Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to respond; effect of failure to respond.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to as provided in §502.201(1) of this subpart or be ordered by the presiding officer.

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

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(5) *Objections.* The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for adjudication.

(6) *Motion regarding the sufficiency of an answer or objection.* The requesting party may move for a determination of the sufficiency of an answer or objection. Unless the presiding officer finds an objection justified, the presiding officer must order that an answer be served. On finding that an answer does not comply with this rule, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may defer a decision until a prehearing conference or a specified time prior to hearing.

(b) *Effect of admission; withdrawal or amendment of admission.* A matter admitted under this rule is conclusively established unless the presiding officer, on motion, permits the admission to be withdrawn or amended. The presiding officer may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the presiding officer is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding. [Rule 207.]

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

(a) Discovery procedures described in §§ 502.202 through 502.207, directed to Commission staff personnel must be permitted and must 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, must be served on the Secretary of the Commission.

(b) The General Counsel must designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are

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directed. The attorney so designated must 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 must become final rulings of the Commission unless an appeal is filed within 10 days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within 20 days of their issuance. Replies to appeals may be filed within 10 days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer must be effective until 20 days from date of issuance unless the Commission otherwise directs. [Rule 208.]

§ 502.209 Use of depositions at hearings.

(a) *Using depositions.* (1) *In general.* At a hearing, all or part of a deposition may be used against a party on these conditions:

(i) The party was present or represented at the taking of the deposition or had reasonable notice of it;

(ii) It is used to the extent it would be admissible if the deponent were present and testifying; and

(iii) The use is allowed by § 502.209(a)(2) through (7).

(2) *Impeachment and other uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by § 502.156 of subpart J of this part.

(3) *Deposition of party, representative, or designee.* An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing representative, or designee under § 502.203(b)(6) or § 502.204(a)(4).

(4) *Unavailable witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the Commission or presiding officer finds:

(i) That the witness is dead;

(ii) That the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(iii) That the party offering the deposition could not procure the witness's attendance by subpoena; or

(iv) On motion and notice, that exceptional circumstances make it desirable, in the interest of justice and with due regard to the importance of live testimony at a hearing, to permit the deposition to be used.

(5) *Using part of a deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(6) *Substituting a party.* Substituting a party does not affect the right to use a deposition previously taken.

(7) *Deposition taken in an earlier action.* A deposition lawfully taken and, if required, filed in any Federal or State court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by §502.156 of subpart J of this part.

(b) *Objections to admissibility.* Subject to §502.202(b) and §502.209(d)(3), an objection may be made at a hearing to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) *Form of presentation.* Unless the presiding officer orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the presiding officer with the testimony in nontranscript form as well.

(d) *Waiver of objections.* (1) *To the notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the officer's qualification.* An objection based on qualification of the officer before whom a deposition is to be taken is waived if not made:

(i) Before the deposition begins; or

(ii) Promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the taking of the deposition.* (i) *Objection to competence, relevance, or materiality.* An objection to a depo-

nent's competence, or to the competence, relevance, or materiality of testimony, is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(ii) *Objection to an error or irregularity.* An objection to an error or irregularity at an oral examination is waived if:

(A) It relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(B) It is not timely made during the deposition.

(iii) *Objection to a written question.* An objection to the form of a written question under §502.204 of this subpart is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) *To completing and returning the deposition.* An objection to how the officer transcribed the testimony, or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition, is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known. [Rule 209.]

§ 502.210 Motions to compel initial disclosures or compliance with discovery requests; failure to comply with order to make disclosure or answer or produce documents; sanctions; enforcement.

(a) *Motion for order to compel initial disclosures or compliance with discovery requests.* (1) A party may file a motion pursuant to §502.69 for an order compelling compliance with the requirement for initial disclosures provided in §502.201 or with its discovery requests as provided in this subpart, if a deponent fails to answer a question asked at a deposition or by written questions; a corporation or other entity fails to make a designation of an individual who will testify on its behalf; a party fails to answer an interrogatory; or a party fails to respond that inspection

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will be permitted, or fails to permit inspection, as requested under § 502.206 of this subpart. For purposes of this section, a failure to make a disclosure, answer, or respond includes an evasive or incomplete disclosure, answer, or response.

(2) A motion to compel must include:

(i) A certification that the moving party has conferred in good faith or attempted to confer with the party failing to make initial disclosure or respond to discovery requests as provided in this subpart in an effort to obtain compliance without the necessity of a motion;

(ii) A copy of the discovery requests that have not been answered or for which evasive or incomplete responses have been given. If the motion is limited to specific discovery requests, only those requests are to be included;

(iii) If a disclosure has been made or an answer or response has been given, a copy of the disclosure, answer, or response in its entirety;

(iv) A copy of the certificate of service that accompanied the discovery request; and

(v) A request for relief and supporting argument, if any.

(3) A party may file a response to the motion within 7 days of the service date of the motion. Unless there is a dispute with respect to the accuracy of the versions of the discovery requests, responses thereto, or the disclosures submitted by the moving party, the response must not include duplicative copies of them.

(4) A reply to a response is not allowed unless requested by the presiding officer, or upon a showing of extraordinary circumstances.

(b) *Failure to comply with order compelling disclosures or discovery.* If a party or a party's officer or authorized representative fails or refuses to obey an order requiring it to make disclosures or to respond to discovery requests, the presiding officer upon his or her own initiative or upon motion of a party may make such orders in regard to the failure or refusal as are just. A motion must include a certification that the moving party has conferred in good faith or attempted to confer with the disobedient party in an effort to obtain compliance without the necessity of a

motion. An order of the presiding officer may:

(1) Direct that the matters included in the order or any other designated facts must be taken to be established for the purposes of the action as the party making the motion claims;

(2) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; or

(3) Strike pleadings in whole or in part; staying further proceedings until the order is obeyed; or dismissing the action or proceeding or any party thereto, or rendering a decision by default against the disobedient party.

(c) *Enforcement of orders and subpoenas.* In the event of refusal to obey an order or failure to comply with a subpoena, 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 subpoenas or orders relating to depositions, written interrogatories, or other discovery matters must be taken within 20 days of the date of refusal to obey or failure to comply. A private party must advise the Commission 5 days (excluding Saturdays, Sundays and legal holidays) before applying to the court of its intent to seek enforcement of such subpoenas and discovery orders.

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

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) All briefs filed pursuant to this section shall ordinarily be limited to eighty (80) pages in length, exclusive of pages containing the table of contents, table of authorities, and certificate of service, unless the presiding officer allows the parties to exceed this limit for good cause shown and upon application filed not later than five (5) days before the time fixed for filing of such a brief or reply. [Rule 221.]

[49 FR 44369, Nov. 6, 1984, as amended at 61 FR 51233, Oct. 1, 1996; 64 FR 7810, Feb. 17, 1999]

§ 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. All initial and recommended decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. Where appropriate, the statement of findings and conclusions should be numbered. Initial decisions should address only those issues necessary to a resolution of the material issues presented on the record. 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 223.]

[64 FR 7810, Feb. 17, 1999]

§ 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—Commission.

All final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues 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. This provision shall also apply to decisions issued pursuant to subpart T of this part. [Rule 225.]

[64 FR 7810, Feb. 17, 1999]

§ 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 judge; replies thereto; review of decisions or orders of dismissal by Commission; and judicial review.

(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) A decision or order of dismissal by an administrative law judge shall only be considered final for purposes of judicial review if the party has first sought review by the Commission pursuant to this section.

(5) Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter.

(6) 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.

(7) The time periods for filing exceptions and replies to exceptions, prescribed by this section, shall not apply to proceedings conducted under § 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.

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(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.

(e) All briefs and replies filed pursuant to this section shall ordinarily be limited to fifty (50) pages in length, exclusive of pages containing the table of contents, table of authorities, and certificate of service, unless the Commission allows the parties to exceed this limit for good cause shown and upon application filed not later than five (5) days before the time fixed for filing of such a brief or reply. [Rule 227.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27211, May 7, 1993; 61 FR 66617, Dec. 18, 1996; 64 FR 7810, Feb. 17, 1999]

§ 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

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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 Interest in reparation proceedings.

Except as to applications for refund or waiver of freight charges under § 502.271 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 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. 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. [Rule 253.]

[64 FR 7810, Feb. 17, 1999]

§ 502.254 Attorney's fees in reparation proceedings.

(a) *Scope.* 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 (46 U.S.C. 41301-41302, 41305-41307(a)). 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.* Petitions 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) and § 502.304(g); 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

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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; 64 FR 7811, Feb. 17, 1999; 74 FR 50716, Oct. 1, 2009]

EXHIBIT NO. 1 TO SUBPART O [§ 502.252] OF PART 502—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 or 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 _____
 By _____ Steamship Company, Collecting Carrier Respondent,
 By _____, Auditor
 By _____, Claimant
 _____, Attorney
 (address and date)

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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]

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Subpart Q—Refund or Waiver of Freight Charges

SOURCE: 64 FR 7811, Feb. 17, 1999, unless otherwise noted.

§ 502.271 Special docket application for permission to refund or waive freight charges.

(a)(1) A common carrier or a shipper may file a special docket application seeking permission for a common carrier or conference to refund or waive collection of a portion of freight charges if there is:

(i) An error in the tariff;

(ii) An error in failing to publish a new tariff; or

(iii) An error in quoting a tariff .

(2) Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(b) Such application must be filed within one hundred eighty (180) days from the date of sailing of the vessel from the port at which the cargo was loaded. 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.

(c) Prior to submission of the application for a refund for an error in a tariff or a failure to publish a new tariff, the carrier or conference must publish a new tariff which sets forth the rate on which refund or waiver would be based.

(d) Such application must be in accordance with Exhibit 1 to this Subpart and must also comply with the following requirements:

(1) Applications must be submitted to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573-0001.

(2) Applications must be submitted in an original and one (1) copy.

(3) Applications must be sworn to before a notary public or otherwise verified in accordance with § 502.112.

(4) 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 § 502.117 to that service in the application. A shipper

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must also make a similar service and certification with respect to the common carrier.

(5) Applications must be accompanied by remittance of a \$77 filing fee.

(e) Any application which does not furnish the information required by this Subpart may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

(f)(1) The Secretary in his discretion shall either forward an application to the Office of Consumer Affairs and Dispute Resolution Services, for assignment to a Special Dockets Officer, or assign an application to the Office of Administrative Law Judges. Authority to issue decisions under this subpart is delegated to the assigned Special Dockets Officer or Administrative Law Judge.

(2) Applicants will be notified as to the assignment of a deciding official, and the assignment of a special docket number. Formal proceedings as described in other rules of this part need not be conducted. The deciding official may, in his or her discretion, require the submission of additional information.

(g) The deciding official shall issue a decision which, pursuant to §501.21 of this chapter, shall become final ten (10) days after service of such decision, unless the Commission in its discretion chooses to review such decision within that time, or the applicant chooses to file exceptions to such decision within that time. [Rule 271.]

[64 FR 7811, Feb. 17, 1999, as amended at 65 FR 81759, Dec. 27, 2000; 67 FR 39859, June 11, 2002; 70 FR 7669, Feb. 15, 2005; 70 FR 10329, Mar. 3, 2005; 70 FR 44867, Aug. 4, 2005]

**EXHIBIT NO. 1 TO SUBPART Q
[§502.271(d)] OF PART 502—APPLICATION FOR REFUND OR WAIVER OF FREIGHT CHARGES DUE TO TARIFF OR QUOTING ERROR**

Federal Maritime Commission Special Docket No. _____ [leave blank].

Amount of Freight Charges to be refunded or waived:

Application of (Name of carrier or 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, container size, and number of containers of individual shipment, as well as all shipments.

(d)(1) Date(s) of receipt of shipment(s) by the carrier;

(2) Date(s) of 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 and tariff commodity description applicable at time of shipment (furnish legible copies of tariff materials).

(l) Rate and commodity description sought to be applied (furnish legible copies of applicable tariff materials).

(m)(1) Amount of applicable freight charges, per shipment and in the aggregate;

(2) 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. Fully explain the basis for the application, i.e., the error, failure to publish, or misquote, showing why the application should be granted. Furnish affidavits, if appropriate, and legible copies of all supporting documents. If the error is due to failure to publish a tariff, specify the date when the carrier and/or conference intended or agreed to publish a new tariff. If the application is based on a misquote, the application must include the affidavit of the person who made the misquote describing the circumstances surrounding such misquote along with any other supporting documentary evidence available.

4. Furnish any information or evidence as to whether granting the application may result in discrimination among shippers, ports or carriers. List any 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 intended rate would

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have become effective and ending on the day before the effective date of the conforming tariff; (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in No. 1, above; or (iii), in the case of a misquote, moved between the date of receipt of shipment(s) described in No. 1 above, and the date(s) of sailing(s).

(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 _____.

(Seal)

Notary Public
My Commission expires.

CERTIFICATE OF SERVICE (if applicable)

I hereby certify that I have this day served the foregoing document upon the (insert the conference name if a conference tariff is involved; or the name of the carrier if the applicant is a shipper) by delivering a copy (insert means by which copy delivered).

Dated in (insert city, county, state) this _____ day of _____. (signature)

For:

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 one (1) copy of this application to the Secretary, Federal Maritime Commission, Washington, DC, 20573-0001.

Dated at _____, this _____ day of _____. (Signature) .

For.

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

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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 rule-making 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

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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 subpoenas 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 subpoenas shall be served in the manner provided in §502.134. [Rule 286.]

[49 FR 44369, Nov. 6, 1984, as amended at 76 FR 10262, Feb. 24, 2011]

§ 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 of 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 (46 U.S.C. 41301(a)) 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) With the consent of both parties, claims filed under this subpart in the amount of \$50,000 or less will be decided by a Settlement Officer appointed by the Federal Maritime Commission Alternative Dispute Resolution Specialist, without the necessity of formal proceedings under the rules of this part. Authority to issue decisions under this subpart is delegated to the appointed Settlement Officer.

(c) Determination of claims under this subpart shall be administratively final and conclusive. [Rule 301.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7812, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001; 74 FR 50716, Oct. 1, 2009]

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§ 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) A claim is deemed filed on the date it is received by the Commission. [Rule 302.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7812, Feb. 17, 1999]

§ 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 \$67 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 decision 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

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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; 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005]

§ 502.305 Applicability of other rules of this part.

(a) Except otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart.

(b) The following sections in subparts A through Q of this part apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (Email transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21–502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.101 (Computation); 502.117 (Certificate of serv-

ice); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney's fees in reparation proceedings). [Rule 305.]

[76 FR 10262, Feb. 24, 2011]

**EXHIBIT NO. 1 TO SUBPART S
[§ 502.304(a)] OF PART 502—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.

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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 \$50,000 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.

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

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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; 64 FR 7812, Feb. 17, 1999; 76 FR 10262, Feb. 24, 2011]

**EXHIBIT NO. 2 TO SUBPART S
[§ 502.304(e)] OF PART 502—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

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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 (46 U.S.C. 41301–41302, 41305–41307(a)), 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; 74 FR 50717, Oct. 1, 2009]

§ 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

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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.

(a) Except otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart.

(b) The following sections in subparts A through Q apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (E-mail transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21–502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.253 (Interest in reparation proceedings); and

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502.254 (Attorney’s fees in reparation proceedings). [Rule 321.]

[76 FR 10262, Feb. 24, 2011]

Subpart U—Alternative Dispute Resolution

SOURCE: 66 FR 43513, Aug. 20, 2001, unless otherwise noted.

§ 502.401 Policy.

It is the policy of the Federal Maritime Commission to use alternative means of dispute resolution to the fullest extent compatible with the law and the agency’s mission and resources. The Commission will consider using ADR in all areas including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract award and administration, litigation brought by or against the Commission, and other interactions with the public and the regulated community. The Commission will provide learning and development opportunities for its employees to develop their ability to use conflict resolution skills, instill knowledge of the theory and practice of ADR, and to facilitate appropriate use of ADR. To this end, all parties to matters under this part are required to consider use of a wide range of alternative means to resolve disputes at an early stage. Parties are encouraged to pursue use of alternative means through the Commission’s Office of Consumer Affairs and Dispute Resolution Services in lieu of or prior to initiating a Commission proceeding. All employees and persons who interact with the Commission are encouraged to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

[66 FR 43513, Aug. 20, 2001, as amended at 70 FR 7669, Feb. 15, 2005; 70 FR 44867, Aug. 4, 2005]

§ 502.402 Definitions.

(a) *Alternative means of dispute resolution* means any procedure that is used

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to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(b) *Award* means any decision by an arbitrator resolving the issues in controversy;

(c) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(d) *Dispute resolution proceeding* means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(e) *In confidence* means, with respect to information, that the information is provided—

(1) With the expressed intent of the source that it not be disclosed; or

(2) Under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(f) *Issue in controversy* means an issue which is material to a decision concerning a program of the Commission, and with which there is disagreement—

(1) Between the Commission and persons who would be substantially affected by the decision; or

(2) Between persons who would be substantially affected by the decision;

(g) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy; and

(h) *Person* has the same meaning as in 5 U.S.C. 551(2).

§ 502.403 General authority.

(a) The Commission intends to consider using a dispute resolution proceeding for the resolution of an issue in controversy, if the parties agree to a dispute resolution proceeding.

(b) The Commission will consider not using a dispute resolution proceeding if—

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subpart are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

§ 502.404 Neutrals.

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

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(c) With consent of the parties, the Federal Maritime Commission Dispute Resolution Specialist will seek to provide a neutral in dispute resolution proceedings through Commission staff, arrangements with other agencies, or on a contractual basis.

(d) *Fees.* Should the parties choose a neutral other than an official or employee of the Commission, fees and expenses shall be borne by the parties as the parties shall agree.

§ 502.405 Confidentiality.

(a) Except as provided in paragraphs (d) and (e) of this section, a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless—

(1) All parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) The dispute resolution communication has already been made public;

(3) The dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines that such testimony or disclosure is necessary to—

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless—

(1) The communication was prepared by the party seeking disclosure;

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(2) All parties to the dispute resolution proceeding consent in writing;

(3) The dispute resolution communication has already been made public;

(4) The dispute resolution communication is required by statute to be made public;

(5) A court determines that such testimony or disclosure is necessary to—

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) Except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of paragraph (a) or (b) of this section shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d) (1) The parties may agree between or amongst themselves to alternative confidential procedures for disclosures by a neutral, and shall inform the neutral before commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding, in accordance with the guidance on confidentiality in federal proceedings published by the Interagency ADR Working Group and adopted by the ADR Council (<http://www.financenet.gov/financenet/fed/iadrwg/confid.pdf>). If the parties do not so inform the neutral, paragraph (a) of this section shall apply.

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(2) To qualify for the exemption under paragraph (j) of this section, an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Paragraphs (a) and (b) of this section shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

§ 502.406 Arbitration.

(a)(1) Arbitration may be used as an alternative means of dispute resolution

whenever all parties consent, except that arbitration may not be used when the Commission or one of its components is a party. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

(i) Submit only certain issues in controversy to arbitration; or

(ii) Arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(b) With the concurrence of the Federal Maritime Commission Dispute Resolution Specialist, binding arbitration may be used to resolve any and all disputes that could be the subject of a Commission administrative proceeding before an Administrative Law Judge. The Federal Maritime Commission Dispute Resolution Specialist may withhold such concurrence after considering the factors specified in § 502.403, should the Commission's General Counsel object to use of binding arbitration.

(c)(1) The Federal Maritime Commission Dispute Resolution Specialist will appoint an arbitrator of the parties' choosing for an arbitration proceeding.

(2) A Commission officer or employee selected as an arbitrator by the parties and appointed by the Federal Maritime Commission Dispute Resolution Specialist shall have authority to settle an issue in controversy through binding arbitration pursuant to the arbitration agreement; provided, however, that decisions by arbitrators shall not have precedential value with respect to decisions by Administrative Law Judges or the Commission. Administrative Law Judges may be appointed as arbitrators with the concurrence of the Chief Administrative Law Judge.

(d) The arbitrator shall be a neutral who meets the criteria of 5 U.S.C. 573.

§ 502.407 Authority of the arbitrator.

An arbitrator to whom a dispute is referred may—

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(a) Regulate the course of and conduct arbitral hearings;

(b) Administer oaths and affirmations;

(c) Compel the attendance of witnesses and production of evidence at the hearing under the provisions of 9 U.S.C. 7 only to the extent the Commission is otherwise authorized by law to do so; and

(d) Make awards.

§ 502.408 Conduct of arbitration proceedings.

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than five days before the hearing.

(b) Any party wishing a record of the hearing shall—

(1) Be responsible for the preparation of such record;

(2) Notify the other parties and the arbitrator of the preparation of such record;

(3) Furnish copies to all identified parties and the arbitrator; and

(4) Pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) The provisions of § 502.11 regarding *ex parte* communications apply to all arbitration proceedings. No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized *ex parte* communication

relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make an award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the parties agree to some other time limit.

§ 502.409 Arbitration awards.

(a)(1) The award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) Exceptions to or an appeal of an arbitrator's decision may not be filed with the Commission.

(b) An award entered in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding.

§ 502.410 Representation of parties.

(a) The provisions of § 502.21 apply to the representation of parties in dispute resolution proceedings, as do the provisions of § 502.27 regarding the representation of parties by nonattorneys.

(b) A neutral in a dispute resolution proceeding may require participants to demonstrate authority to enter into a binding agreement reached by means of a dispute resolution proceeding.

§ 502.411 Mediation and other alternative means of dispute resolution.

(a) Parties are encouraged to utilize mediation or other forms of alternative dispute resolution in all formal proceedings. The Commission also encourages those with disputes to pursue mediation in lieu of, or prior to, the initiation of a Commission proceeding.

(b) Any party may request, at any time, that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request is made in a proceeding assigned to an Administrative Law Judge, the provisions of § 502.91 apply. For all other matters, alternative dispute resolution services may be requested directly from the Federal Maritime Commission Alternative Dispute Resolution Specialist, who may serve as the neutral if the parties agree or who will arrange for the appointment of a neutral acceptable to all parties.

(c) The neutral shall convene and conduct mediation or other appropriate dispute resolution proceedings with the parties.

(d) *Ex parte Communications.* Except with respect to arbitration, the provisions of § 502.11 do not apply to dispute resolution proceedings, and mediators are expressly authorized to conduct private sessions with parties.

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 pro-

ceedings 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

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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.

(vi) For purposes of paragraph (e)(3) of this section, a small entity as defined in 5 U.S.C. 601.

(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 appli-

cant 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.

(3) In an adversary adjudication arising from a Commission action to enforce a party’s compliance with a statutory or regulatory requirement, if the demand by the Commission is substantially in excess of the decision of the presiding officer and is unreasonable under the facts and circumstances of the case, the presiding officer shall award to the party fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

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(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 \$125 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 ap-

propriate portion of the award shall be made against that agency. [Rule 501.]

[52 FR 28264, July 29, 1987, as amended at 64 FR 7812, Feb. 17, 1999]

§ 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

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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 reimbursement 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. [Rule 502.]

[52 FR 28264, July 29, 1987, as amended at 64 FR 7812, Feb. 17, 1999]

§ 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

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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.

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(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. [Rule 503.]

[52 FR 28264, July 29, 1987, as amended at 64 FR 7812, Feb. 17, 1999]

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 19 of the Merchant Marine Act, 1920 (46 U.S.C. 42101-42109), section 13 of the Shipping Act of 1984 (46 U.S.C. 41107-41109), and sections 2(c) and 3(c) of Pub. L. 89-777 (46 U.S.C. 44104) by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Merchant Marine Act, 1920, 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. [Rule 601.]

[64 FR 7812, Feb. 17, 1999, as amended at 74 FR 50717, Oct. 1, 2009]

§ 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

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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 19(f)(4), 19(g)(4) and 19(k) of the Merchant Marine Act, 1920 (46 U.S.C. 42104(a), 42104(d), and 42108); any provision of the Shipping Act of 1984 (46 U.S.C. 40101–41309); sections 2 and 3 of Pub. L. 89-777 (46 U.S.C. 44101–44106); 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 Merchant Marine Act, 1920, the Shipping Act of 1984, or Pub. L. 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. [Rule 602.]

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 64 FR 7812, Feb. 17, 1999; 74 FR 50717, Oct. 1, 2009]

§ 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). [Rule 603.]

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 64 FR 7812, Feb. 17, 1999]

§ 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 Notice and Demand Letter (“NDL”) to the respondent, by registered or certified mail, or by other means reasonably calculated to give notice. The NDL will describe specific violation(s) on which the claim is

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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; the availability of alternative dispute resolution, including mediation, through the Commission's Office of Consumer Affairs and Dispute Resolution Services; 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 Director, Bureau of Enforcement, is delegated authority to issue NDLs and compromise civil penalties as set forth in this subpart, provided, however, that approval of the Managing Director is obtained prior to issuance of each NDL and provided further that compromise agreements shall not be effective unless approved by the Managing Director, whose signature evidencing approval shall appear on compromise agreements, in addition to that of the Director of the Bureau of Enforcement. The Director, Bureau of Enforcement, has the authority to negotiate the terms of compromise agreements.

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 61 FR 51233, Oct. 1, 1996; 64 FR 7812, 7813, Feb. 17, 1999; 75 FR 29455, May 26, 2010]

§ 502.605 Payment of penalty: Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made by bank cashier's check or other instrument acceptable to the Commission.

(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

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hearing have been waived by the respondent in writing. [Rule 605.]

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 64 FR 7813, Feb. 17, 1999]

APPENDIX A TO SUBPART W OF PART 502—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 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; 65 FR 81759, Dec. 27, 2000]

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

Subpart A—General

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