

Issued: March 13, 2015

FEDERAL MARITIME COMMISSION

46 CFR Part 502

Docket No. 15-01

RIN: 3072-AC59

Amendments to Rules Governing Service of Private Party Complaints and Documents Containing Confidential Materials

AGENCY: Federal Maritime Commission

ACTION: Direct Final Rule, Request for Comments

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing service of private party complaints and the filing of documents containing confidential material. These revisions will add clarifying instructions for parties to proceedings.

DATES: This rule will become final effective June 24, 2015 unless significant adverse comments are filed prior to May 26, 2015.

ADDRESSES: Address all comments concerning this proposed rule to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202) 523-5725
Email: secretary@fmc.gov

FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202) 523-5725
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SUPPLEMENTARY INFORMATION:

46 CFR 502.5

The Commission proposes to amend section 502.5 of Title 46 of the Code of Federal Regulations in order to instruct parties on how to request confidential treatment of their documents and how to mark confidential material. The revision requires segregation and clear marking of confidential and non-confidential information. The current confidentiality provisions in Part 502 will benefit from a more consistent format.

The revisions also correct an erroneous reference to section 502.201(i)(1)(vii) in the introductory text to section 502.5. The reference to section 502.201(i)(1)(vii) in the introductory text was intended to refer to confidential information within protective orders, but the currently cited provision does not exist. The revision corrects the citation to section 502.201(j)(1)(vii).

46 CFR 502.113

The Commission proposes to amend section 502.113 of Title 46 of the Code of Federal Regulations concerning service of private party complaints. 46 U.S.C. section 41301 requires the Commission to “provide a copy of the complaint to the person named in the complaint.” This revision would clarify and memorialize that the Commission will use U.S. mail or express mail to serve the complaint. A notice is published, and will

continue to be published, in the *Federal Register* for each private party complaint for formal adjudication that is filed with the Commission. Additionally, a full copy of the formal complaint is available on the Commission's website, www.fmc.gov, and available in the Commission's Docket Library. The proposed rule continues to allow for alternative service by other means by the Complainant but specifies that it may only do so after the complaint has been filed with the Commission and must inform the Commission of the method, time, and place of service. To conform to this clarification, 46 CFR 502.62(b)(1) is amended to clarify the time an answer to the complaint is due. Sections 502.304 and 502.305 are also revised to reflect that the Secretary will also serve small claims complaints filed pursuant to 46 CFR Subpart S.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, archives and records, business and industry, classified information, confidential business information, consumer protection, freedom of information, Government in the Sunshine Act, government publications, health records, information, newspapers and magazines, trade names, trade practices, record retention, records, reporting and recordkeeping requirements, paperwork requirements, printing, publications, privacy, public meetings.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to revise 46 CFR Part 502 as follows:

PART 502 – RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

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.

Subpart A—General Information

2. Amend §502.5 to read as follows:

§502.5 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all filings that contain information for which confidential treatment is sought or information previously designated as confidential pursuant to §§502.13, 502.167, 502.201(j)(1)(vii), or any other rules of this part, or for which a request for protective order pursuant to § 502.201(j) is pending, are subject to the following requirements:

(a) *Two versions of filings.* Two versions of documents must be filed if a document: (i) contains information previously designated by the Commission or presiding officer as confidential; or (ii) contains information for which confidential treatment is sought. Except as specified below, both versions must be filed in accordance with the requirements of §502.2.

(1) *Confidential version.* The confidential filing must include a cover page marked “Confidential-Restricted.” The specific confidential information must be conspicuously and clearly marked on each page, for example by highlighting or bracing. If confidentiality will end on a date certain or upon the occurrence of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL

DURING JUDICIAL REVIEW.” The confidential version of a document may be provided to the presiding officer by e-mail but should not be filed with the Office of the Secretary by e-mail.

(2) *Public version.* Within three business days of filing a confidential version of a filing, a public version must be filed. The public version must indicate on the cover page and on each affected page “Public Version – confidential materials excluded.” The public version must clearly indicate any information withheld, for example with blackout or braces, and its pagination and depiction of text on each page must be identical to that of the confidential version. For example, the confidential filing may read: “On January 1, 2005, complainant entered into a {25} year lease with respondent for a monthly rent of {\$1,000}.” The public version would read: “On January 1, 2005, complainant entered into a { } year lease with respondent for a monthly rent of { }.” Public versions of confidential filings may be filed with the Secretary and presiding officer by e-mail.

(3) *Exhibits.* Confidential information in exhibits should be marked as specified above. If marking within the text is not feasible, individual pages may be replaced in the public version with a page indicating that confidential material is excluded. Entire exhibits should not be excluded, only those pages containing confidential material.

(b) *Motion for confidential treatment.* If confidentiality is sought for a filing containing information not previously designated as confidential by the Commission or presiding officer, the confidential filing must be accompanied by a motion justifying confidential treatment. This motion must identify the specific information in a document for which protection is sought and show good cause by demonstrating that the information is a trade secret or other confidential research, development, or commercial information pursuant

to § 502.201(j)(1)(vii). The burden is on the party that wants to protect the information to show good cause for its protection. A motion is not required for information, including personal privacy and financial account numbers, redacted pursuant to §502.13, Privacy protection for filings made with the Commission.

(c) *Use of confidential information.* 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 decision in the proceeding. [Rule 5.]

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Subpart E – Proceeding, Pleadings, Motions and Replies

3. Amend §502.62(b)(1) by adding “or the Complainant” after the phrase “service of the complaint by the Commission”

Subpart H – Form, Execution and Service of Documents

4. Amend the Subpart heading to read as follows:

Subpart H – Service of Documents

5. Amend §502.113 to read as follows:

§ 502.113 Service of private party complaints.

(a) Complaints filed pursuant to §502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to §502.66(b)), small claims complaints filed pursuant to §502.304, and Complainant's memoranda filed in shortened procedure cases pursuant to §502.182, will be served by the Secretary of the Commission.

(b) The Secretary will serve the complaint using first class mail or express mail service at the Respondent's address provided by the Complainant. If the complaint cannot be delivered, for example if the complaint is returned as undeliverable or not accepted for delivery, the Secretary will notify the Complainant.

(c) *Alternative Service by Complainant.* The Complainant may serve the Complaint at any time after it has been filed with the Commission. If Complainant serves the complaint, an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service.

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

Subpart S – Informal Procedure for Adjudication of Small Claims

6. Amend §502.304 to read as follows:

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(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Secretary on the respondent named in the claim.

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7. Amend §502.305 to read as follows:

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(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); 502.113 (Service of private

party complaints); 502.117 (Certificate of service); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney's fees in reparation proceedings). [Rule 305.]

Karen V. Gregory
Secretary