

ORIGINAL

November 24, 1998

FEDERAL MARITIME COMMISSION

46 CFR Parts 502 & 571

Docket No. 98-21

**MISCELLANEOUS AMENDMENTS
TO RULES OF PRACTICE AND PROCEDURE**

AGENCY: Federal Maritime Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Maritime Commission intends to make corrections and changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. At the same time, the Commission is restructuring all of its rules and regulations. (See Tables herein.) This proposed rule would modify Part 502 (Rules of Practice and Procedure) and Part 571 (to be redesignated as Part 545) (Interpretations and Statements of Policy).

DATES: Submit comments on or before [Insert date thirty (30) days after date of publication in the FEDERAL REGISTER]

ADDRESSES: Address all comments concerning this proposed rule to:

Joseph C. Polking, Secretary
Federal Maritime Commission
800 North Capitol St., N.W., Room 1046
Washington, D.C., 20573-0001

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105-258, 112 Stat. 1902, which made numerous changes to the Shipping Act of 1984 ("1984 Act"), Pub. L. 98-237, 98 Stat. 67 (46 U.S.C. app. secs. 1701 through 1720), was enacted on October 14, 1998, and becomes effective on May 1, 1999. Among other things, OSRA authorizes the Commission to prescribe implementing rules and regulations. Accordingly, the Federal Maritime Commission (hereinafter referred to as the Commission) must conform all of its rules and regulations to this new statute.

In addition to changes required by OSRA, other changes will be made to improve various rules and to bring them in line with current practices, guidelines and organization. This approach will provide the Commission and the industry with the opportunity to review the Commission's rules and regulations related to ocean shipping. This review process should ultimately result in a more useful realignment of Chapter IV of Title 46 of the CFR.

The Commission takes this opportunity to inform the public of its intended general reorganization of parts 500-588. As realigned, the Commission's rules will be contained in three Subchapters. Subchapter A will continue to set forth general and administrative provisions. Subchapter B will contain all of the Commission's basic regulations concerning operations in the

U.S. foreign commerce. Subchapter C will be set aside to cover matters involving the restrictive maritime practices of foreign governments and controlled carriers. Subchapter D will be removed. All rule changes will become effective May 1, 1999. An outline of the foregoing is set forth in the following tables:

FEDERAL MARITIME COMMISSION – 46 CFR,
CHAPTER IV. – REDESIGNATION AND
DISTRIBUTION TABLE

Old part or section (§)	New part or section (§)
500	508
501	501
502	502
§ 502.92 (Special Dockets)	§ 502.271
503	503
504	504
505	505
506	506
507	507
510	515
§ 510.25 & § 514.1(c)(1)(iii) (Anti-rebate Certification)	To be removed.
514	520, 525 & 565
§ 514.7 & § 514.17 (Service Contracts)	530
540	540
571	545
572	535
§ 572.301 (Agreement Exemptions)	§ 502.67 (All exemptions)
582	To be removed.
583	515
585	550
586	551
587	560
588	555

FEDERAL MARITIME COMMISSION - 46 CFR,
CHAPTER IV. - DERIVATION TABLE

New part	Old part
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(SUBCHAPTER A - GENERAL AND ADMINISTRATIVE PROVISIONS)

501	501
502	502
503	503
504	504
505	505
506	506
507	507
508	500

(SUBCHAPTER B - REGULATIONS AFFECTING OCEAN SHIPPING
IN FOREIGN COMMERCE)

515	510, 583
520	514
525	514
530	514
535	572
540	540
545	571

(SUBCHAPTER C - REGULATIONS AND ACTIONS TO ADDRESS
RESTRICTIVE FOREIGN MARITIME PRACTICES)

550	585
551	586
555	588
560	587
565	(Controlled Carriers -- New).

In addition to providing notice of the Commission's intent to reorganize its rules, this notice of proposed rulemaking proposes various amendments to Parts 502 and 571. Changes to other parts of the Commission's rules will be the subject of future notices of proposed rulemaking.

The OSRA, among other things, modified section 8(e) of the 1984 Act by adding authority for the Commission, upon application, to grant refund and waiver of tariff charges for errors in quoting a tariff, and eliminating tariff filing at the Commission, instead requiring common carriers to publish tariffs and make them electronically available. The OSRA also modified the standards for exemption from requirements of the 1984 Act, and changed its provisions prohibiting the refusal to negotiate with a shipper's association. In addition, the Commission's Rules of Practice and Procedure, located currently at 46 CFR 502, contain references to statutes no longer within the purview of the Commission, certain provisions are in need of modernization and clarification, and the Commission desires to change certain other provisions. The Commission now proposes to make the following modifications to Parts 502 and 571 to reflect statutory changes, and to clarify, reorganize, modernize, and improve its rules of practice and procedure. The proposed modifications will be addressed seriatim.

The authority citation would be modified to drop references to the Shipping Act, 1916 ("1916 Act"), responsibility for which has been transferred to the Surface Transportation Board ("STB") within the Department of Transportation, and to list OSRA, Public Law 105-258, as an authority for Part 502. Similarly, § 502.1 would be modified to drop references to the 1916 Act and the Intercoastal Shipping Act, 1933 ("1933 Act"), responsibility for which also has been transferred to the STB.

To improve structure, current § 502.11(a) would be moved and become new § 502.2(e), thus leaving § 502.11 to deal only with ex parte communications. Also, the heading of § 502.21(c) would be changed to better reflect its subject matter, i.e., special appearance.

Section 502.23 would be restructured for simplification purposes, and modernized to replace references to telephone calls and telegrams with references to facsimile and e-mail. Exhibit No. 1 to subpart B of Part 502 would similarly be modified. Also, proposed § 502.23(d) would accommodate requests by attorneys to withdraw from representing a client. Some recent proceedings have involved issues concerning attempts by counsel to withdraw from representation. Current § 502.23 provides for substitution of counsel, but is silent with respect to withdrawal of counsel.

Section 502.24 would be modified to delete reference to field offices, since the Commission no longer has any field offices.

Section 502.26 would be modified to incorporate the standards of conduct set forth in the American Bar Association's Model Rules of Professional Conduct as the standards to govern conduct of attorneys practicing before the Commission.

Changes are proposed to § 502.42 to reflect the fact that the Director, Bureau of Enforcement, is not necessarily a party to proceedings involving petitions, small claim proceedings, and special docket proceedings.

For clarification purposes, § 502.51 would be modified to reflect that rulemaking proceedings may be initiated on the Commission's own motion, as well as by petition. Also, a new paragraph would be added to § 502.62 to point out the requirement in § 502.201(b) that discovery be commenced with the filing of a complaint.

Section 502.63 would be modified for clarification by revising the section heading, as well as deleting references to the 1916 Act. Section 502.64 would be revised to explicitly require answers to be verified, in conformity with Exhibit 1 to Subpart E.

A new rule, § 502.67, would set forth the exemption procedures under the OSRA, which amended the exemption standard by eliminating inquiries as to whether a proposed exemption would "substantially impair effective regulation" or would "be unjustly discriminatory." The new standard looks only at whether the proposed exemption would "result in substantial reduction in competition" or would "be detrimental to commerce." If not, then the Commission may determine to grant the exemption. New § 502.67 is substantially similar to old § 572.301, but applies to all exemption applications, rather than solely to agreement exemption applications.

References to the 1916 Act would be deleted from § 502.75 and Exhibit 1 to Subpart E.

The Commission's special docket rules, currently at § 502.92, and Exhibit 1 to Subpart F would be moved to Subpart Q, and modified to reflect changes in the new OSRA.

Sections 502.102, 502.104, 502.105 and 502.112 are being revised for simplification purposes, while § 502.111 is modernized to reflect the use of modern technology, including facsimile transmission of documents.

Proposed changes to § 502.113 would provide a procedure for service of a complaint by complainants when the Commission's Secretary has been unable to obtain service by mail. The presiding officer would also have discretion to dismiss any complaint when service has not been obtained within thirty days after filing the complaint. There have been occasions where the Secretary could not obtain service by mail, and the proposed change would codify the current

practice of allowing complainants the option of effecting service in lieu of service by the Secretary.

Section 502.114 would be simplified and modernized by allowing for facsimile service upon agreement between parties, and would also revise a citation to conform with changes made by the OSRA. Correspondingly, § 502.116 would allow for service by facsimile.

A modification to § 502.118 would add notices of appearance to the types of filings requiring submission of an original and four copies, thus codifying existing practice. Section 502.119 would be restructured for simplification.

The provision regarding attendance and mileage fees in § 502.133 would be revised to apply also to witnesses summoned to a deposition, thus bringing the provision into conformity with Rule 45 of the Federal Rules of Civil Procedure. In § 502.143, a citation error would be corrected, while § 502.144 would be modernized to reflect the possibility of notice by facsimile or e-mail and to clarify that filing of motions for postponement of a hearing would be governed by § 502.104.

Section 502.146 would be updated to add service of complaints filed under shortened procedure, § 502.182, and referral of claims under Subpart T as events that trigger commencement of the functions of the Administrative Law Judges. Similarly, Subpart T would be added as to functions under § 502.147. A reference to the 1933 Act is also removed from § 502.147.

In Subpart L, modifications would be made to § 502.201 for clarification and to delete reference to the 1916 Act.

A fifty page limitation on the size of briefs would be imposed for briefs filed under § 502.221, as well as for briefs on exceptions and appeals under § 502.227. This limitation tracks the Federal Rules of Appellate Procedure. The presiding officer or the Commission, as the case may be, would have the discretion to allow parties to exceed these limits.

Sections 502.223 and 502.225 would be amended to prescribe separate content requirements for decisions by the Administrative Law Judges and decisions by the Commission. Initial or recommended decisions by the Administrative Law Judges would include numbered statements of findings and conclusions, and would be limited to issues necessary to resolution of material issues. The content requirements for final decisions by the Commission would remain unchanged.

A new § 502.227(a)(4) would be added to make clear that initial decisions and dismissals by an administrative law judge that have become final are not appealable to a court by a party unless that party has filed exceptions or an appeal with the Commission as provided in § 502.227. The Supreme Court in Darby v. Cisneros, 509 U.S. 137 (1993), determined that the judicially created doctrine of exhaustion of administrative remedies is restricted by Section 10(c) of the Administrative Procedure Act, 5 U.S.C. 701 et. seq.. Under this ruling, a court may hear an appeal of an initial decision even without the plaintiff having first exhausted administrative remedies by filing exceptions, unless the agency has, by rule, required that such an appeal be filed with the agency before a court appeal may be filed. The proposed change would provide such a requirement.

The Commission's rule on interest, § 502.253 would be modified to delete reference to the 1916 Act and the 1933 Act. The rule for obtaining attorney's fees, § 502.254 would be

modified to enable the awarding of attorney's fees in small claim proceedings. Currently, § 502.254 excepts small claims proceedings under Subpart S from the award of attorney's fees, but the language of section 11(g) of the 1984 Act requires award of attorney's fees in all cases where reparations are awarded.

Subpart Q would be revised to eliminate the current listing of schedules and forms, as it is duplicative. The Commission's special docket rule would be moved from § 502.92 to Subpart Q, and modified to reflect new provisions in the OSRA allowing refund or waiver of tariff charges for errors in quoting charges. The Commission proposes to expedite its special docket procedures by providing that decisions by deciding officials will become final within ten days, unless exceptions are filed or the Commission determines to review such decision. Currently, decisions are not final for thirty days, and parties may file exceptions within twenty-two days of the decision. Since the filing of exceptions to or review by the Commission of special docket decisions are rare, current procedures inordinately delay the finality of a decision. Also, the revised application form, Exhibit No. 1 to Subpart Q, would require submission of the date a shipment was received. This is important since the date a shipment is received is the date for determining the applicable tariff charges. The application form would also require proof in the form of an affidavit and other available evidence if the application is based on a misquote. Finally, minor changes would also be made to § 502.271 and Exhibit No. 1 to Subpart Q to, among other things, simplify directions, substitute "tariff materials" for outdated referrals to "tariff pages," replace tariff "filing" references with tariff "publishing", and eliminate provisions concerning the 1916 Act.

Regarding small claim proceedings under Subpart S, §§ 502.301 and 502.302 would be revised to delete provisions relating to the 1916 Act and the 1933 Act, while § 502.305 would be revised so that the Commission's rules on awards of interest and attorney's fees apply to small claims proceedings. Moreover, references to the 1916 and 1933 Acts would be removed from the information provisions of Exhibit No. 1 to Subpart S. Similarly, references to the 1916 and 1933 Acts would be removed from § 502.401.

In Subpart V, § 502.501 would be updated to reflect 1996 amendments to the Equal Access to Justice Act.

In Subpart W, references to the 1916 Act and the 1933 Act would be deleted from §§ 502.601 and 502.602. Section 502.604 would be modified to provide for delivery by means other than registered or certified mail of a Notice and Demand Letter affording an opportunity for compromise of a civil penalty. Section 502.605 would be revised to remove provisions for a promissory note as a means of effecting payment of penalties.

The Ocean Shipping Reform Act deleted § 10(b)(13) of the 1984 Act, which had prohibited common carriers from refusing to negotiate with a shippers' association and replaced it with a new section 10(b)(10) to prohibit the unreasonable refusal to deal or negotiate. In Part 571, § 571.1 was based in part upon the now deleted § 10(b)(13). The Commission therefore proposes to redesignate Part 571 as Part 545, and to amend new § 545.1 to delete reference to former § 10(b)(13) and to refer to new § 10(b)(10).

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities. The amendments will either have no affect on small entities, or in the case where the amendments are likely to impact small entities, the economic impact will be de minimis.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 571

Antitrust, Maritime carriers.

For the reasons stated in the preamble, the Federal Maritime Commission proposes to amend 46 CFR parts 502 and 571 as follows:

PART 502-RULES OF PRACTICE AND PROCEDURE

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

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561-569, 571-596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; Pub. L. 105-258; and Pub. L. 88-777 (46 U.S.C. app. 817d, 817e).

2. Amend § 502.1 as follows:

a. Revise the first sentence of § 502.1 to read as follows:

§ 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. * * *

b. Move "[Rule 1]" to the end of the section.

3. Amend § 502.2 to read as follows:

a. In the text of paragraph (c) revise "§ 502.11 (b)" to read "§ 502.11."

b. In paragraph (d) remove "[Rule 2.]"

c. Add paragraph (e) to read as follows:

§ 502.2 Filing of documents; hours; mailing address.

* * * * *

(e) Any pleading, document, writing or other paper submitted for filing which is rejected because it does not conform to the rules in this part shall be returned to the sender. [Rule 2.]

4. Amend §502.11 as follows:

a. Revise section heading to read as follows:

§ 502.11 Ex parte communications.

* * * * *

b. Remove paragraph (a).

c. Redesignate paragraphs (b)(1) through (b)(7) as paragraphs (a) through (g).

5. In § 502.12, add "[Rule 12.]" to the end of the text.

6. In §502.21, revise the paragraph heading in paragraph (c) to read as follows:

§ 502.21 Appearance.

* * * * *

(c) Special appearance. * * *

7. Revise §502.23 to read as follows:

§ 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) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. Such notice shall indicate whether the representative wishes to be notified of decisions by telephone, facsimile transmission, or electronic mail. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted.

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

(c) 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.

(d) If an attorney wishes to withdraw from representing a party, such 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.

8. Revise § 502.24(b) to read as follows:

§ 502.24 Practice before the Commission defined.

* * * * *

(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.]

9. Revise §502.26, to read as follows:

§ 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 must represent in writing, filed with the Secretary, that he is admitted to practice and in good standing. 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.]

10. In § 502.27(a)(1) correct "§ 503.43(h)" to read "§ 503.43(g)."

11. Revise Exhibit No. 1 to Subpart B as follows:

Exhibit No. 1 to Subpart B

Federal Maritime Commission

Notice of Appearance

Docket No. _____:

Please enter my appearance in this proceeding as counsel for _____

I request to be informed of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding by:

telephone (In the event that I am not available when you call, appropriate advice left with my office will suffice.)

facsimile transmission

electronic mail

[Name]

[Address]

[Telephone No.]

[Fax No.]

[E-mail address]

[Signature]

12. Revise §502.42 to read as follows:

§ 502.42 Bureau of Enforcement.

The Director, Bureau of Enforcement, shall be a party to all proceedings governed by the rules in this part except that in complaint proceedings under § 502.62, the Director may become a party only upon leave to intervene granted pursuant to § 502.72, in rulemaking proceedings and

in proceedings considering petitions the Director may become a party by designation if the Commission determines that the circumstances of the proceeding warrant such participation, and the Director will not ordinarily be a party to small claims proceedings under § 502.304 and special docket proceedings under § 502.271. The Director or the Director's representative shall be served with copies of all papers, pleadings, and documents in every proceeding in which the Bureau of Enforcement is a party. The Bureau of Enforcement shall actively participate in any proceeding to which the Director is a party, to the extent required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act. (See §502.224). [Rule 42.]

13. Revise §502.51 to read as follows:

§ 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 \$177 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.]

14. In § 502.56, add "[Rule 56.]" at the end of the text.

15. In § 502.61, add "[Rule 61.]" to the end of paragraph (d).

16. In § 502.62, redesignate paragraph (g) as paragraph (h), revise redesignated paragraph (h) and add new paragraph (g) to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(g) Complainants desiring to use the discovery provisions of Subpart L must commence discovery at the time the complaint is filed, pursuant to § 502.201(b).

(h) For special types of cases, see § 502.271 in Subpart Q (Refund or waiver of freight charges); Subpart K (Shortened Procedure); and Subpart S (Small Claims). [Rule 62.]

17. In § 502.63, remove paragraph (a), redesignate paragraphs (b) through (e) as paragraphs (a) through (d), and revise the section heading to read as follows:

§ 502.63 Statute of limitations for reparations.

* * * * *

18. Amend § 502.64 as follows:

a. Add a sentence to the end of paragraph (a) to read as follows:

§ 502.64 Answer to complaint; countercomplaint.

(a) * * *. An answer to the complaint must be verified.

* * * * *

b. Add "[Rule 64.]" to the end of paragraph (d).

19. Revise § 502.67 to read as follows:

§ 502.67 Exemption procedures - General.

(a) Authority. The Commission, upon application or on its own motion, may by order or rule exempt for the future (1) any class of agreements between persons subject to the Shipping Act of 1984 or (2) any specified activity of persons subject to the Shipping Act of 1984 from any requirement of the Shipping Act of 1984 if it 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 (1) any class of agreements or an individual agreement or (2) any specified activity pursuant to section 16 of the Shipping Act of 1984. A petition for exemption shall state the particular requirement of the Shipping Act of 1984 for which exemption is sought. The petition shall also include a statement of the reasons why an exemption should be granted or revoked, shall provide information relevant to any finding required by the Shipping Act of 1984 and shall comply with § 502.69. Where a petition for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(c) Participation by interested persons. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(d) Federal Register notice. Notice of any proposed exemption or revocation of exemption, whether upon petition or upon the Commission's own motion, shall be published in the Federal Register. The notice shall 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, D.C.; and
- (5) The final date for filing comments regarding the proposal. [Rule 67.]

20. In § 502.71, add "[Rule 71 .]" to the end of the text.

21. In § 502.75, revise paragraph (a) to read as follows:

§ 502.75 Proceedings involving assessment agreements.

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

* * * * *

22. In Exhibit 1 to Subpart E, remove the third paragraph after the heading "Information to Assist in Filing Formal Complaint," beginning with the text "Under the Shipping Act, 1916"

23. In § 502.91, add "[Rule 91.]" to the end of paragraph (d).

24. In Subpart F, remove and reserve § 502.92, and remove Exhibit 1.

25. In § 502.94, add "[Rule 94.]" to the end of paragraph (c).

26. Revise § 502.102 to read as follows:

§ 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.]

27. Add two sentences before the last sentence of § 502.104 to read as follows:

§ 502.104 Postponement of hearing.

**** 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. ***

28. Revise § 502.105 to read as follows:

§ 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.]

29. In Subpart H, revise § 502.111 to read as follows:

§ 502.111 Form and appearance of documents filed with Commission.

(a) All papers to be filed under the rules in this part must be clear and legible, dated, show the docket description and title of the proceeding, and include the title, if any, and address of the signer. 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 must be single spaced and indented. The paper must be strong and durable, not more than 8 ½ inches wide and 12 inches long, with a left

hand margin of 1 ½ inches. Documents shall be printed in clear type, never smaller than 12 point.

(b) Filings by facsimile for purposes of meeting a deadline will not be accepted unless authorized by the presiding officer or the Secretary.

(c) Facsimile transmissions of signature pages on filings will be tentatively accepted for the purpose of meeting filing deadlines pending receipt of the original signature page within seven working days. [Rule 111.]

30. Amend § 502.112 as follows:

a. Revise the section heading to read as follows:

§ 502.112 Verification of documents.

* * * * *

b. Add "[Rule 112.]" to the end of paragraph (c)(2).

31. Revise § 502.113 to read as follows:

§ 502.113 Service by the Commission.

(a) Complaints filed pursuant to § 502.62, (including any accompanying 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) Alternatively, should the Secretary be unable to obtain service by mail, proper service of a complaint may be effected by complainant, 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.]

32. In § 502.114, revise the section heading and paragraph (a) to read as follows:

§ 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.

* * * * *

33. Amend § 502.114(b) as follows:

a. Revise "(Rule 53)" to read "(Rule 52)."

b. Revise "(Part 585)" to read "(Part 550)."

c. Revise "13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. § 1712(b)(5) (Part 587)" to read "13(b)(6) of the Shipping Act of 1984 (Part 560)."

34. Revise § 502.116 to read as follows:

§ 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.]

35. In § 502.118, revise paragraph (b)(2) to read as follows:

§ 502.118 Copies of documents for use of the Commission.

* * * * *

(b) * * *

(2) An original and four copies shall be filed with the Secretary of prehearing statements required by § 502.95, stipulations under § 502.162, notices of appearance required by § 502.23, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

* * * * *

36. In § 502.119, revise paragraphs (a) and (b) to read as follows:

§ 502.119 Documents containing confidential materials.

* * * * *

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

(b) Whenever a confidential filing is submitted, there must also be submitted an original and one copy 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."

* * * * *

37. Revise § 502.133 to read as follows:

§ 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.]

38. In the text of § 502.143 revise "§ 502.133," to read "§ 502.113."

39. In § 502.144,

a. Redesignate the current text as paragraph (a).

b. Revise the section heading as follows:

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

b. Revise the last sentence of redesignated paragraph (a) to read as follows:

* * * * *

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

c. Add new paragraph (b) to read as follows:

* * * * *

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

40. In § 502.146, revise paragraph (a) and paragraph (c) to read as follows:

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

* * * * *

(a) Upon the service by the Commission of a complaint filed pursuant to § 502.62, or § 502.182, or upon referral under Subpart T of this part; or

(b) * * *

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

* * * * *

41. In the first sentence of paragraph (a) of § 502.147 remove the phrase "except with regard to that portion of any order involving the Commission's suspension authority set forth in section 3, Intercoastal Shipping Act, 1933."

42. In § 502.147, revise paragraph (b) to read as follows:

§ 502.147 Functions and powers.

* * * * *

(b) 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.]

43. Amend § 502.201 as follows

a. Revise paragraph (a) to read as follows:

§ 502.201 General provisions governing discovery.

(a) *Applicability.* The procedures described in this subpart are available in all adjudicatory proceedings under the Shipping Act of 1984. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

* * * * *

b. Revise the paragraph heading in paragraph (d) to read as follows:

(d) *Duty of the parties to meet or confer.* * * *

c. Revise the paragraph heading in paragraph (f) to read as follows:

(f) *Conferences by order of the presiding officer.* * * *

* * * * *

44. In § 502.221, revise paragraph (f) to read as follows:

§ 502.221 Briefs; requests for findings.

* * * * *

(f) All briefs 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 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.]

45. Revise § 502.223 to read as follows:

§ 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.]

46. Revise § 502.225 to read as follows:

§ 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]

47. Amend § 502.227 as follows:

a. Revise the section heading to read as follows:

§ 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.

b. Redesignate paragraphs (a)(4) through (6) as paragraphs (a)(5) through (7),

c. Add a new paragraph (a)(4) to read as follows

(a) * * *

(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.

* * * * *

d. Remove "[Rule 227]" from paragraph (d).

e. Add new paragraph (e) to read as follows:

(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.]

48. Revise § 502.253 to read as follows:

§ 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.]

49. Amend § 502.254 as follows:

a. Revise the first sentence of paragraph (a) to read as follows:

§ 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. * * *

b. Revise paragraph (c)(1)(i) to read as follows:

(c) * * * (1) * * *

(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

* * * * *

50. Revise Subpart Q to read as follows:

Subpart Q - Refund or waiver of freight charges

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

(5) Applications must be accompanied by remittance of an \$86 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 assign all applications to either a Special Dockets Officer or 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.]

Exhibit No. 1 to Subpart Q

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 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; of 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, D.C., 20573.

Dated at _____, this ____ day ____ of ____ .

[Signature]

For .

51. In § 502.301, remove paragraph (b) and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

52. In § 502.302, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

53. Revise § 502.305 to read as follows:

§ 502.305 Applicability of other rules of this part.

Except §§ 502.253 and 502.254 or as otherwise specifically provided in this subpart, the rules in Subparts A through Q, inclusive, do not apply to situations covered by this subpart.

[Rule 305.]

54. In Exhibit 1 to Subpart S, in the section entitled *Information to Assist in Filing Informal Complaints*, remove the third paragraph beginning with the text "Under the Shipping Act, 1916"

55. Revise § 502.321 to read as follows:

§ 502.321 Applicability of other rules of this part.

Except as specifically provided in this part, rules in Subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 321.]

56. Amend § 502.401 as follows:

a. Revise paragraph (b) by removing "Shipping Act, 1916, 46 U.S.C. app. 801 et seq.;" and removing "the Intercoastal Shipping Act 1933, 46 U.S.C. app. 843 et seq."

b. Remove paragraph (d), redesignate paragraph (e) as paragraph (d), and add "[Rule 401.]" to the end of redesignated paragraph (e).

57. Amend § 502.501 as follows:

a. Add new paragraph (d)(2)(vi) to read as follows:

§ 502.501 General provisions.

* * * * *

(d) * * *

(2) * * *

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

601.

b. Add new paragraph (e)(3) to read as follows:

(e) *Standards for awards.* (1) * * *

(2) * * *

(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.

* * * * *

c. Revise the first sentence of paragraph (f)(2) to read as follows:

(f) *Allowable fees and expenses.* (1) * * *

(2) No award for the fee of an attorney or agent under this subpart may exceed \$125 per hour. * * *

d. Add "[Rule 501.]" to the end of paragraph (g).

58. In § 502.502, add "[Rule 502.]" to the end of paragraph (d)(3).

59. In § 502.503, add "[Rule 503.]" to the end of paragraph (j)(2).

60. Revise § 502.601 to read as follows:

§ 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, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89-777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the 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.]

61. Amend § 502.602 as follows:

a. Revise paragraph (h) to read as follows:

§ 502.602 Definitions

* * * * *

(h) "*Violation*" includes any violation of sections 19(6)(d), 19(7)(d) and 19(11) of the Merchant Marine Act, 1920; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89-777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Merchant Marine Act, 1920, the Shipping Act of 1984, or Public Law 89-777.

* * * * *

b. Add "[Rule 602.]" to the end of paragraph (i).

62. In § 502.603, add "[Rule 603.]" to the end of paragraph (c).

63. Amend § 502.604 as follows:

a. Revise the first sentence of paragraph (b) to read as follows:

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

* * * * *

(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. * * *

b. Add "[Rule 604.]" to the end of paragraph (g).

64. Amend § 502.605 as follows:

a. Revise paragraph (a) to read as follows:

§ 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. Add "[Rule 605.]" to the end of paragraph (c).

PART 571 – INTERPRETATIONS AND STATEMENTS OF POLICY

1. Redesignate Part 571 as Part 545.

2. The authority citation for redesignated Part 545 continues to read as follows:

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

3. In redesignated § 545.1, revise paragraph (a) to read as follows:

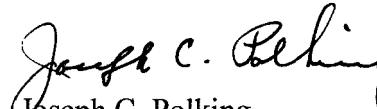
§ 545.1 Interpretation of Shipping Act of 1984 -- Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(10) of the 1984 Act prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the 1984 Act exempts from the

antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

* * * * *

By the Commission.



Joseph C. Polking
Secretary

§ 1.41-8 [Redesignated as § 1.41-S and Amended]

Par. 14. Section 1.41-8 is redesignated as § 1.41-6, and the last sentence of paragraph (c) is amended by removing the language “§ 1.41-3, except that § 1.41-3(c)(2)” and adding “§ 1.41-3A, except that § 1.41-3A(c)(2)” in its place.

§ 1.41-9 [Redesignated as § 1.41-7]

Par. 15. Section 1.41-9 is redesignated as § 1.41-7.

Par. 16. New § 1.41-6 is added to read as follows:

§ 1.41-6 Special rules for taxable years ending on or after the date final regulations are published in the Federal Register.

(a) Alternative incremental credit. At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(4).

(b) Election-(l) *In general.* A taxpayer may elect to apply the provisions of the alternative incremental credit in section 41(c)(4) for any taxable year of the taxpayer beginning after June 30, 1996. If a taxpayer makes an election under section 41(c)(4), the election applies to the taxable year for which made and all subsequent taxable years.

(2) *Time and manner of election.* An election under section 41(c)(4) is made by completing the portion of Form 6765, “Credit for Increasing Research Activities,” relating to the election of the alternative incremental credit, and attaching the completed form to the taxpayer’s timely filed original return (including extensions) for the taxable year to which the election applies.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer must attach the Commissioner’s consent to revoke an election under section 41(c)(4) to the taxpayer’s timely filed original return (including extensions) for the taxable year of the revocation.

Par. 17. Section 1.41-0A is added under the new undesignated centerheading “Research Credit—For Taxable Years Beginning Before January 1, 1990” to read as follows:

§ 1.41-0A Table of contents.

This section lists the paragraphs contained in §§ 1.41-0A, 1.41-3A, 1.41-4A and 1.41-5A.

§ 1.41-0A Table of contents.**§ 1.41-3A Base period research expenses.**

- (a) Number of years in base period.
- (b) New taxpayers.
- (c) Definition of base period research expenses.
- (d) Special rules for short taxable years.

- (1) Short determination year.
- (2) Short base period year.
- (3) Years overlapping the effective dates of section 41 (section 44F).
 - (i) Determination years.
 - (ii) Base period years.
- (4) Number of months in a short taxable year.
- (e) Examples.

§ 1.41-4A Qualified research for taxable years beginning before January 1, 1986.

- (a) General rule.
- (b) Activities outside the United States.
 - (1) In-house research.
 - (2) Contract research.
 - (c) Social sciences or humanities.
 - (d) Research funded by any grant, contract, or otherwise.
 - (1) In general.
 - (2) Research in which taxpayer retains no rights.
 - (3) Research in which the taxpayer retains substantial rights.
 - (i) In general.
 - (ii) Pro rata allocation.
 - (iii) Project-by-project determination.
 - (4) independent research and development under the Federal Acquisition Regulations System and similar provisions.
 - (5) Funding determinable only in subsequent taxable year.
 - (6) Examples.

§ 1.41-5A Basic research for taxable years beginning before January 1, 1987.

- (a) In general.
- (b) Trade or business requirement.
- (c) Prepaid amounts.
 - (1) In general.
 - (2) Transfers of property.
 - (d) Written research agreement.
 - (1) In general.
 - (2) Agreement between a corporation and a qualified organization after June 30, 1963.
 - (i) In general.
 - (ii) Transfers of property.
 - (3) Agreement between a qualified fund and a qualified educational organization after June 30, 1983.
 - (e) Exclusions.
 - (1) Research conducted outside the United States.
 - (2) Research in the social sciences or humanities.
 - (f) Procedure for making an election to be treated as a qualified fund.

§ 1.218-o [Removed]

Par. 18. Section 1.218-O is removed.

§ 1.482-7 [Amended]

Par. 19. In § 1.482-7, the sixth sentence of paragraph (h)(l) is amended by removing the language “§ 1.41-8(e)” and adding “§ 1.41-6(e)” in its place.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98-31528 Filed 12-01-98; 8:45 am]

BILLING CODE 4830-01-P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 545 and 571

[Docket No. 98-21]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission,

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission intends to make corrections and changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. At the same time, the Commission is restructuring all of its rules and regulations. (See Tables herein.) This proposed rule would modify part 502 (Rules of Practice and Procedure) and part 571 (to be redesignated as part 545) (Interpretations and Statements of Policy).

DATES: Submit comments on or before January 4, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., N.W., Room 1046, Washington, D.C., 20573-0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., N.W., Room 1046, Washington, D.C. 20573-4001 (202) 523-5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

The Ocean Shipping Reform Act of 1998 (“OSRA”), Pub. L. 105-258, 112 Stat. 1902, which made numerous changes to the Shipping Act of 1984 (“1984 Act”), Pub. L. 98-237, 98 Stat. 67 (46 U.S.C. app. secs. 1701 through 1720), was enacted on October 14, 1998, and becomes effective on May 1, 1999. Among other things, OSRA authorizes the Commission to prescribe implementing rules and regulations. Accordingly, the Federal Maritime Commission (hereinafter referred to as the Commission) must conform all of its rules and regulations to this new statute.

In addition to changes required by OSRA, other changes will be made to improve various rules and to bring them in line with current practices, guidelines and organization. This approach will provide the Commission and the industry with the opportunity to review the Commission’s rules and regulations related to ocean shipping. This review process should ultimately result in a more useful realignment of Chapter IV of Title 46 of the CFR.

The Commission takes this opportunity to inform the public of its intended general reorganization of parts 500-588. As realigned, the Commission's rules will be contained in three Subchapters. Subchapter A will continue to set forth general and administrative provisions. Subchapter B will contain all of the Commission's basic regulations concerning Operations in the U.S. foreign commerce. Subchapter C will be set aside to cover matters involving the restrictive maritime practices of foreign governments and controlled carriers. Subchapter D will be removed. All rule changes will become effective May 1, 1999. An outline of the foregoing is set forth in the following tables:

FEDERAL MARITIME COMMISSION—46 CFR, CHAPTER IV.—REDESIGNATION AND DISTRIBUTION TABLE

Old part or section (§)	-New part or section (§)
500	\$08.
501	\$01.
502	\$02.
§ 502.92 (Special Dockets)	§ 502.271.
503	\$03.
504	\$04.
505	\$05.
506	\$06.
507	\$07.
510	\$15.
§ 510.25 & 9514.1(c)(1)(iii) (Anti-rebate Certification).	To be removed.
514	520,525, & 565.
9514.7 & § 514.17 (Service Contracts).	\$30.
540	\$40.
571	\$45.
572	\$35.
§ 572.301 (Agreement Exemptions).	§ 502.67 (All exemptions).
582	To be removed.
563	\$15.
585	\$50.
586	\$51.
587	\$60.
586	\$55.

FEDERAL MARITIME COMMISSION—46 CFR, CHAPTER IV.—DERIVATION TABLE

New part	Old part
(Subchapter A—General and Administrative Provisions)	
501	501.
502	502.
503	503.
504	504.
505	505.
506	506.
507	507.

FEDERAL MARITIME COMMISSION—46 CFR, CHAPTER IV.—DERIVATION TABLE—Continued

New part	Old part
508	500
(Subchapter B—Regulations Affecting Ocean Shipping in Foreign Commerce)	
515	510, 583.
520	514.
525	514.
530	514.
535	572.
540	540.
545	571.
(Subchapter C—Regulations and Actions to Address Restrictive Foreign Maritime Practices)	
550	585.
551	586.
555	588.
560	587.
565	(Controlled Carriers—New).

In addition to providing notice of the Commission's intent to reorganize its rules, this notice of proposed rulemaking proposes various amendments to Parts 502 and 571. Changes to other parts of the Commission's rules will be the subject of future notices of proposed rulemaking.

The OSRA, among other things, modified section 8(e) of the 1984 Act by adding authority for the Commission, upon application, to grant refund and waiver of tariff charges for errors in quoting a tariff, and eliminating tariff filing at the Commission, instead requiring common carriers to publish tariffs and make them electronically available. The OSRA also modified the standards for exemption from requirements of the 1984 Act, and changed its provisions prohibiting the refusal to negotiate with a shipper's association. In addition, the Commission's Rules of Practice and Procedure, located currently at 46 CFR 502, contain references to statutes no longer within the purview of the Commission, certain provisions are in need of modernization and clarification, and the Commission desires to change certain other provisions. The Commission now proposes to make the following modifications to Parts 502 and 571 to reflect statutory changes, and to clarify, reorganize, modernize, and improve its rules of practice and procedure. The proposed modifications will be addressed seriatim.

The authority citation would be modified to drop references to the

Shipping Act, 1916 ("1916 Act"), responsibility for which has been transferred to the Surface Transportation Board ("STB") within the Department of Transportation, and to list OSRA, Public Law 105-258, as an authority for Part 502. Similarly, § 502.1 would be modified to drop references to the 1916 Act and the Intercoastal Shipping Act, 1933 ("1933 Act"), responsibility for which also has been transferred to the STB.

To improve structure, current § 502.11(a) would be moved and become new § 502.2(e), thus leaving § 502.11 to deal only with ex parte communications. Also, the heading of § 502.21(c) would be changed to better reflect its subject matter, i.e., special appearance.

Section 502.23 would be restructured for simplification purposes, and modernized to replace references to telephone calls and telegrams with references to facsimile and e-mail. Exhibit No. 1 to subpart B of Part 502 would similarly be modified. Also, proposed § 502.23(d) would accommodate requests by attorneys to withdraw from representing a client. Some recent proceedings have involved issues concerning attempts by counsel to withdraw from representation. Current § 502.23 provides for substitution of counsel, but is silent with respect to withdrawal of counsel.

Section 502.24 would be modified to delete reference to field offices, since the Commission no longer has any field offices.

Section 502.26 would be modified to incorporate the standards of conduct set forth in the American Bar Association's Model Rules of Professional Conduct as the standards to govern conduct of attorneys practicing before the Commission.

Changes are proposed to § 502.42 to reflect the fact that the Director, Bureau of Enforcement, is not necessarily a party to proceedings involving petitions, small claim proceedings, and special docket proceedings.

For clarification purposes, § 502.51 would be modified to reflect that rulemaking proceedings may be initiated on the Commission's own motion, as well as by petition. Also, a new paragraph would be added to § 502.62 to point out the requirement in § 502.201(b) that discovery be commenced with the filing of a complaint.

Section 502.63 would be modified for clarification by revising the section heading, as well as deleting references to the 1916 Act. Section 502.64 would be revised to explicitly require answers

to be verified, in conformity with Exhibit 1 to Subpart E.

A new rule, § 502.67, would set forth the exemption procedures under the OSRA, which amended the exemption standard by eliminating inquiries as to whether a proposed exemption would "substantially impair effective regulation" or would "be unjustly discriminatory." The new standard looks only at whether the proposed exemption would "result in substantial reduction in competition" or would "be detrimental to commerce." If not, then the Commission may determine to grant the exemption. New § 502.67 is substantially similar to old § 572.301, but applies to all exemption applications, rather than solely to agreement exemption applications.

References to the 1916 Act would be deleted from § 502.75 and Exhibit 1 to Subpart E.

The Commission's special docket rules, currently at § 502.92, and Exhibit 1 to Subpart F would be moved to Subpart Q, and modified to reflect changes in the new OSRA.

Sections 502.102, 502.104, 502.105 and 502.112 are being revised for simplification purposes, while § 502.111 is modernized to reflect the use of modern technology, including facsimile transmission of documents.

Proposed changes to § 502.113 would provide a procedure for service of a complaint by complainants when the Commission's Secretary has been unable to obtain service by mail. The presiding officer would also have discretion to dismiss any complaint when service has not been obtained within thirty days after filing the complaint. There have been occasions where the Secretary could not obtain service by mail, and the proposed change would codify the current practice of allowing complainants the option of effecting service in lieu of service by the Secretary.

Section 502.114 would be simplified and modernized by allowing for facsimile service upon agreement between parties, and would also revise a citation to conform with changes made by the OSRA. Correspondingly, § 502.116 would allow for service by facsimile.

A modification to § 502.118 would add notices of appearance to the types of filings requiring submission of an original and four copies, thus codifying existing practice. Section 502.119 would be restructured for simplification.

The provision regarding attendance and mileage fees in § 502.133 would be revised to apply also to witnesses summoned to a deposition, thus bringing the provision into conformity

with Rule 45 of the Federal Rules of Civil Procedure. In § 502.143, a citation error would be corrected, while § 502.144 would be modernized to reflect the possibility of notice by facsimile or e-mail and to clarify that filing of motions for postponement of a hearing would be governed by § 502.104.

Section 502.146 would be updated to add service of complaints filed under shortened procedure, § 502.182, and referral of claims under Subpart T as events that trigger commencement of the functions of the Administrative Law Judges. Similarly, Subpart T would be added as to functions under § 502.147. A reference to the 1933 Act is also removed from § 502.147.

In Subpart L, modifications would be made to § 502.201 for clarification and to delete reference to the 1916 Act.

A fifty page limitation on the size of briefs would be imposed for briefs filed under § 502.221, as well as for briefs on exceptions and appeals under § 502.227. This limitation tracks the Federal Rules of Appellate Procedure. The presiding officer or the Commission, as the case may be, would have the discretion to allow parties to exceed these limits.

Sections 502.223 and 502.225 would be amended to prescribe separate content requirements for decisions by the Administrative Law Judges and decisions by the Commission. Initial or recommended decisions by the Administrative Law Judges would include numbered statements of findings and conclusions, and would be limited to issues necessary to resolution of material issues. The content requirements for final decisions by the Commission would remain unchanged.

A new § 502.227(a)(4) would be added to make clear that initial decisions and dismissals by an administrative law judge that have become final are not appealable to a court by a party unless that party has filed exceptions or an appeal with the Commission as provided in § 502.227. The Supreme Court in *Darby v. Cisneros*, 509 U.S. 137 (1993), determined that the judicially created doctrine of exhaustion of administrative remedies is restricted by Section 10(c) of the Administrative Procedure Act, 5 U.S.C. 701 et. seq. Under this ruling, a court may hear an appeal of an initial decision even without the plaintiff having first exhausted administrative remedies by filing exceptions, unless the agency has, by rule, required that such an appeal be filed with the agency before a court appeal may be filed. The proposed change would provide such a requirement.

The Commission's rule on interest, § 502.253 would be modified to delete reference to the 1916 Act and the 1933 Act. The rule for obtaining attorney's fees, § 502.254 would be modified to enable the awarding of attorney's fees in small claim proceedings. Currently, § 502.254 excepts small claims proceedings under Subpart S from the award of attorney's fees, but the language of section 11(g) of the 1984 Act requires award of attorney's fees in all cases where reparations are awarded.

Subpart Q would be revised to eliminate the current listing of schedules and forms, as it is duplicative. The Commission's special docket rule would be moved from § 502.92 to Subpart Q, and modified to reflect new provisions in the OSRA allowing refund or waiver of tariff charges for errors in quoting charges. The Commission proposes to expedite its special docket procedures by providing that decisions by deciding officials will become final within ten days, unless exceptions are filed or the Commission determines to review such decision. Currently, decisions are not final for thirty days, and parties may file exceptions within twenty-two days of the decision. Since the filing of exceptions to or review by the Commission of special docket decisions are rare, current procedures inordinately delay the finality of a decision. Also, the revised application form, Exhibit No. 1 to Subpart Q, would require submission of the date a shipment was received. This is important since the date a shipment is received is the date for determining the applicable tariff charges. The application form would also require proof in the form of an affidavit and other available evidence if the application is based on a misquote. Finally, minor changes would also be made to § 502.271 and Exhibit No. 1 to Subpart Q to, among other things, simplify directions, substitute "tariff materials" for outdated referrals to "tariff pages," replace tariff "filing" references with tariff "publishing", and eliminate provisions concerning the 1916 Act.

Regarding small claim proceedings under Subpart S, §§ 502.301 and 502.302 would be revised to delete provisions relating to the 1916 Act and the 1933 Act, while § 502.305 would be revised so that the Commission's rules on awards of interest and attorney's fees apply to small claims proceedings. Moreover, references to the 1916 and 1933 Acts would be removed from the information provisions of Exhibit No. 1 to Subpart S. Similarly, references to the 1916 and 1933 Acts would be removed from § 502.401.

In Subpart V, § 502.501 would be updated to reflect 1996 amendments to the Equal Access to Justice Act.

In Subpart W, references to the 1916 Act and the 1933 Act would be deleted from §§ 502.601 and 502.602. Section 502.604 would be modified to provide for delivery by means other than registered or certified mail of a Notice and Demand Letter affording an opportunity for compromise of a civil penalty. Section 502.605 would be revised to remove provisions for a promissory note as a means of effecting payment of penalties.

The Ocean Shipping Reform Act deleted § 10(b)(13) of the 1984 Act, which had prohibited common carriers from refusing to & negotiate with a shippers' association and replaced it with a new section 10(b)(10) to prohibit the unreasonable refusal to deal or negotiate. In Part 571, § 571.1 was based in part upon the now deleted § 10(b)(13). The Commission therefore proposes to redesignate Part 571 as Part 545, and to amend new § 545.1 to delete reference to former § 10(b)(13) and to refer to new § 10(b)(10).

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities. The amendment will either have no effect on small entities, or in the case where the amendments are likely to impact small entities, the economic impact will be de minimis.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Parts 545 and 571

Antitrust, Maritime carriers. For the reasons stated in the preamble, the Federal Maritime Commission proposes to amend 46 CFR parts 502, 545 and 571 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

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

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–598; 12 U.S.C. 1141(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 970f; 46 U.S.C.

app. 1114(b), 1705, 1707–1711, 1713–1716, E.O. 11222 of May 8, 1965 (30 FR 6469), 21 U.S.C. 853a; Pub. L. 105–258; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

2. Amend § 502.1 as follows:

a. Revise the first sentence of § 502.1 to read as set forth below;

b. Move “(Rule 1.)” to the end of the section.

§ 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.

3. Amend § 502.2 to read as follows:

a. In the text of paragraph (c) revise “§ 502.11(b)” to read “§ 502.11.”

b. In paragraph (d) remove “[Rule 2.]”

c. Add paragraph (e) to read as follows:

§ 502.2 Filing of documents: hours; mailing address.

* * * * *

(e) Any pleading, document, writing or other paper submitted for filing which is rejected because it does not conform to the rules in this part shall be returned to the sender. [Rule 2.]

4. Amend § 502.11 as follows:

a. Revise section heading to read as set forth below;

b. Remove paragraph (a).

c. Redesignate paragraphs (h)(1) through (b)(7) as paragraphs (a) through (g).

§ 502.11 Ex parte communications.

* * * * *

§ 502.12 [Amended]

5. In § 502.12, add “[Rule 12.]” to the end of the text.

6. In § 502.21, revise the paragraph heading in paragraph (c) to read as follows:

§ 502.21 Appearance.

* * * * *

(c) *Special appearance.* * * *

7. Revise § 502.23 to read as follows:

§ 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) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. Such notice shall indicate whether the representative wishes to be notified of decisions by telephone, facsimile transmission, or electronic mail. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted.

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

(c) 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.

(d) If an attorney wishes to withdraw from representing a party, such attorney shall file an appropriate motion seeking permission to withdraw and provide appropriate reasons for making this 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.

8. Revise § 502.24(b) to read as follows:

§ 502.24 Practice before the Commission defined.

* * * * *

(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.)

9. Revise § 502.26, to read as follows:

§ 502.25 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 must represent in writing, filed with the Secretary, that he is admitted to practice and in good standing. 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.]

§ 502.27 [Amended]

10. In § 502.27(a)(1) correct “§ 503.43(h)” to read “§ 503.43(g).”

11. Revise Exhibit No. 1 to Subpart B as follows:

Exhibit No. 1 to Subpart B

Federal Maritime Commission

Notice of Appearance

Docket No. _____

Please enter my appearance in **this proceeding as counsel** for

I request to be informed of service of the administrative law judge’s **initial** or recommended **decision** and of the Commission’s **decision** in this proceeding by:

- telephone (In the event that I am not available when you call, appropriate advice left with my office will suffice.)
- facsimile transmission
- electronic mail

[Name]

[Address]

[Telephone No.]

[Fax No.]

[E-mail address]

[Signature]

12. Revise § 502.42 to read as follows:

§ 502.42 Bureau of Enforcement.

The Director, **Bureau of Enforcement**, shall be a party to all proceedings governed by the **rules in this part** except that in complaint **proceedings under § 502.62**, the **Director may** become a party only upon leave to intervene granted pursuant to **§ 502.72**, in rulemaking **proceedings** and in proceedings consider & petitions the Director may become a party by designation if the **Commission** determines that the **circumstances of the proceeding warrant such participation**, and the Director will not **ordinarily** be a party to small **claims proceedings** under § 502.304 and special docket proceedings under § 502.271. The Director or the **Director’s representative** shall be served with **copies of all papers, pleadings, and documents** in every proceeding in which the **Bureau of Enforcement** is a party. The **Bureau of Enforcement** shall **actively participate** in any proceeding to which the **Director** is a party, to the extent required in the **public interest**, subject to the **separation of functions** required by section 5(c) of the Administrative Procedure Act. (See § 502.224). [Rule 42.1

13. Revise § 502.51 to read as follows:

§ 508.51 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 I of this part. Petitions shall be accompanied by remittance of a \$177 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 51.1

§ 502.55 [Amended]

14. In § 502.56, add “[Rule 56.]” at the end of the text.

§ 502.81 [Amended]

25. In § 502.61, add “[Rule 61.]” to the end of paragraph (d).

16. In § 502.62, redesignate paragraph (g) as paragraph (h), revise redesignated paragraph (h) and add new paragraph (g) to read as follows:

§ 502.62 Complaints and fee.

(g) Complainants desiring to use the discovery provisions of subpart L must commence discovery at the time the complaint is filed, pursuant to § 502.201(b).

(h) For special types of cases, see § 502.271 in subpart Q (Refund or waiver of freight charges); subpart K (Shortened Procedure); and subpart S (Small Claims). [Rule 62.]

17. In § 502.63, remove paragraph (a), redesignate paragraphs (b) through (e) as paragraphs (a) through (d), and revise the section heading to read as follows:

(602.63 Statute of limitations for reparations.

18. Amend § 502.64 as follows:

- a. Add a sentence to the end of paragraph (a) to read as set forth below;
- b. Add “[Rule 64.]” to the end of paragraph (d).

§ 502.54 Answer to complaint; counterclaim.

(a) * * * An answer to the **complaint** must be verified.

* * * * *

19. Add § 502.67 to read as follows:

§ 502.67 Exemption procedures-Gen@.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future **any** class of agreements between persons subject to the Shipping Act of 1984 or any specified activity of **persons** subject to the Shipping Act of 1984 **from** any requirement of the Shipping Act of 1984 if it 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. A petition for exemption shall state the particular requirement of the Shipping Act of 1984 for which exemption is sought. The petition shall also include a statement of the reasons why an exemption should be granted or revoked, shall provide information relevant to **any finding** required by the Shipping Act of 1984 and shall comply with § 502.69. Where a petition for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(c) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(d) **Federal Register** notice. Notice of any proposed exemption or revocation of exemption, whether upon petition or upon the Commission’s own motion, shall be published in **the Federal Register**. The notice shall 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, D.C.; and

(5) The final date for filing comments regarding the proposal. [Rule 87.]

§ 502.71 [Amended]

20. In § 502.71, add "[Rule 71.]" to the end of the text.

21. In § 502.75, revise paragraph (a) to read as follows:

§ 502.75 Proceedings involving assessment agreement

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

22. In Exhibit 1 to subpart E, remove the third paragraph beginning with "Information to assist in filing a formal Complaint," beginning with the text "Under the Shipping Act of 1984."

§ 502.91 [Amended]

23. In § 502.91, add "[Part 91.]" to the end of paragraph (d).

Subpart F [Amended]

24. In Subpart F, remove and reserve § 502.92; and remove and reserve § 502.93.

§ 502.94 [Amended]

25. In § 502.94, add "[Part 94.]" to the end of paragraph (c).

26. Revise § 502.102 to read as follows:

§ 502.102 Enlargement of time for documents

(a) Motions for enlargement of time for the filing of any pleading, motion, document, or information shall follow the procedures of subpart E. A motion shall set forth the reasons for the motion and be submitted, with the fee, before the scheduled filing date. Except for good cause shown, no motion to meet this time requirement shall result in summary rejection of the request.

(b) Such motions shall only be granted under exceptional circumstances clearly demonstrated in the motion. Motions shall conform to the requirements of part H of this part. If a motion is granted, they show that the movant has provided actual notice of the motion to all parties in relation to briefs, motions, and replies to exceptions to motions. Motions shall conform to the provisions of §§ 502.222 and 502.223.

(c) Upon motion, the date of the expiration of the time for filing may be postponed.

reasonable grounds are found for the failure to file.

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

27. Add two sentences before the last sentence of § 502.104 to read as follows:

§ 502.104 Postponement of hearing.

* * * 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. * * *

28. Revise § 502.105 to read as follows:

§ 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.]

29. In subpart H, revise § 502.111 to read as follows:

§ 502.111 Form and appearance of documents filed with Commission.

(a) All papers to be filed under the rules in this part must be clear and legible, dated, show the docket description and title of the proceeding, and include the title, if any, and address of the signer. 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 must be single spaced and indented. The paper must be strong and durable, not more than 8½ inches wide and 12 inches long, with a left hand margin of 1½ inches. Documents shall be printed in clear type, never smaller than 12 point.

(b) Filings by facsimile for purposes of meeting a deadline will not be accepted unless authorized by the presiding officer or the Secretary.

(c) Facsimile transmissions of signature pages on filings will be tentatively accepted for the purpose of meeting filing deadlines pending receipt of the original signature page within seven working days. [Rule 111.]

30. Amend § 502.112 as follows:

a. Revise the section heading to read as set forth below;

b. Add "[Rule 112.]" to the end of paragraph (c)(2).

§ 502.112 Verification of documents.

* * * * *
31. Revise § 502.113 to read as follows:

§ 502.113 Service by the Commission.

(a) Complaints filed pursuant to § 502.62, (including any accompanying 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) Alternatively, should the Secretary be unable to obtain service by mail, proper service of a complaint may be effected by complainant, 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 declare a complaint that has not been served within thirty (30) days after the complaint was filed. [Rule 113.]

32. In § 502.114, revise the section heading and paragraph (a) to read as follows:

§ 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 a copy to each party, by hand or in person; by mail, properly addressed with postage prepaid; by certified facsimile transmission if agreed by both parties prior to service.

§ 502.114 [Amended]

33. Amend § 502.114(b) as follows:
a. Revise "[Rule 53]" to read "[Rule 52]."

b. Revise "[Part 585]" to read "[Part 550]."

c. Revise "13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1742 (part 587)" to read "13(b)(6) of the Shipping Act of 1984 (part 586)".

34. Revise § 502.116 to read as follows:

§ 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.]

35. In § 502.118, revise paragraph (b)(2) to read as follows:

§ 592.119 Copies of documents for use of the Commission.

(b) * * *

(2) An original and four copies shall be filed with the Secretary of hearing statements required by § 502.95, stipulations under § 502.162, notices of appearance required by § 502.23, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

36. In § 502.119, revise paragraphs (a) and (b) to read as follows:

§ 592.119 Documents containing confidential materials.

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

(b) Whenever a confidential filing is submitted, there must also be submitted an original and one copy 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."

37. Revise § 502.133 to read as follows:

§ 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 payable to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

§ 502.143 [Amended]

38. In the text of § 502.143 revise "§ 502.133," to read "§ 502.113."

39. In § 502.144:

- a. Redesignate the current text as paragraph (a).
b. Revise the section heading as set forth below;
c. Revise the last sentence of redesignated paragraph (a) to read as set forth below;
d. Add new paragraph (b) to read as set forth below.

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

(a) * * * 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.]

40. In § 502.146, revise paragraph (a) and paragraph (c) to read as follows:

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

(a) Upon the service by the Commission of a complaint filed pursuant to § 502.62, or § 502.162, or upon referral under subpart T of this part; or

(b) * * *

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

41. In the first sentence of paragraph (a) of § 502.147 remove the phrase "except with regard to that portion of any order involving the Commission's suspension authority set forth in section 3, Intercoastal Shipping Act, 1933."

42. In § 502.147, revise paragraph (b) to read as follows:

§ 562.147 Functions and powers.

(b) 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.]

43. Amend § 502.201 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise the paragraph heading in paragraph (d) to read as set forth below;

c. Revise the paragraph heading in paragraph (f) to read as follows:

§ 502.201 General provisions governing discovery.

(a) Applicability. The procedures described in this subpart are available in all adjudicatory proceedings under the Shipping Act of 1964. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

(d) Duty of the parties to meet or confer. * * *

(f) Conferences by order of the presiding officer. * * *

44. In § 502.221, revise paragraph (f) to read as follows:

§ 592.221 Briefs; requests for findings.

(f) All briefs 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 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 221.1)

45. Revise § 502.223 to read as follows:

§ 592.223 Decisions—Administrative law judges.

To the administrative law judges is delegated the authority to make and serve initial or recommended decision. 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.)

46. Revise § 502.225 to read as follows:

§ 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 225.1)

47. Amend § 502.227 as follows:

a. Revise the section heading to read as set forth below;

b. Redesignate paragraphs (a)(4) through (6) as paragraphs (a)(5) through (7);

c. Add a new paragraph (a)(4) to read as set forth below;

d. Remove "[Rule 227]" from paragraph (d);

e. Add new paragraph (e) to read as follows:

§ 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) * * *

(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.

(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 227.1]

48. Revise § 502.253 to read as follows:

§ 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 US 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.)

49. Amend § 502.254 as follows:

a. Revise the first sentence of paragraph (a) to read as set forth below;

b. Revise paragraph (c)(1)(i) to read as set forth below:

§ 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.

(i) With the presiding officer where the presiding officer's decision awarding reparations became administratively final pursuant to § 502.227(a)(3) and § 592.394(g); or

50. Revise Subpart Q to read as follows:

Subpart Q-Refund or Waiver of Freight Charges

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 205 73-0001.

(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 to certify in accordance with § 502.117 to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier.

(5) Applications must be accompanied by remittance of an \$36 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 assign all applications to either a Special Dockets Officer or the Office of Administrative Law Judges. Authority to issue decisions under this subpart & 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 & thin that time, or the applicant chooses to file exceptions to such decision within that time. [Rule 271.]

Exhibit No. 1 to Subpart Q
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)(l) 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 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 d a y o f _____

(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; of 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, D.C., 20573.

Dated at _____, this _____ day of _____.

Signature). For.

§ 502.301 [Amended]

51. In § 502.301, remove paragraph (b) and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

§ 502.302 [Amended]

52. In § 502.302, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

53. Revise § 502.305 to read as follows:

§ 502.305 Applicability of other rules of this part.

Except §§ 502.253 and 502.254 or as otherwise specifically provided in this subpart, the rules in subparts A through Q, inclusive, do not apply to situations covered by this subpart. (Rule 305.)

Subpart S—[Amended]

54. In Exhibit 1 to Subpart S, in the section entitled Information to Assist in Filing Informal Complaints, remove the third paragraph beginning with the text "Under the Shipping Act, 1916. . . ."

55. Revise § 502.321 to read as follows:

§ 502.321 Applicability of other rules of this part.

Except as specifically provided in this part, rules in Subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. (Rule 321.)

§ 562.401 [Amended]

56. Amend § 502.401 as follows:

a. Amend paragraph (b) by removing "Shipping Act, 1916, 46 U.S.C. app. 801 et seq.;" and removing "the Intercoastal Shipping Act 1933, 46 U.S.C. app. 643 et seq."

b. Remove paragraph (d), and redesignate paragraph (e) as paragraph (d).

57. Amend § 502.501 as follows:

a. Add new paragraph (d)(2)(vi) to read as set forth below;

b. Add new paragraph (e)(3) to read as set forth below;

c. Revise the first sentence of paragraph (f)(2) to read as set forth below;

d. Add "[Rule 501.]" to the end of paragraph (g).

§ 502.501 General provisions.

- (d) * * *
(2) * * *

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

(e) *Standards for awards.* (1) * * *

(2) * * *

(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.

(f) *Allowable fees and expenses.* (1)

(2) No award for the fee of an attorney or agent under this subpart may exceed \$125 per hour. . . .

§ 502.502 [Amended]

56. In § 502.508, add "[Rule 502.]" to the end of paragraph (d)(3).

§ 502.503 [Amended]

59. In § 502.501, add "[Rule-503.1]" to the end of paragraph (j)(2).

60. Revise § 502.601 to read as follows:

§ 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, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89-777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the 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 601.1)

61. Amend § 502.602 as follows:

a. Revise paragraph (h) to read as set forth below:

b. Add "[Rule 602.1]" to the end of paragraph (i).

§ 502.602 Definitions.

(h) "Violation" includes any violation of sections 19(6)(d), 19(7)(d) and 19(11)

of the Merchant Marine Act, 1920; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89-777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Merchant Marine Act, 1920, the Shipping Act of 1984, or Public Law 89-777.

§ 602.603 [Amended]

62. In § 502.603, add "[Rule 603.]" to the end of paragraph (c).

63. Amend § 502.604 as follows:

a. Revise the first sentence of paragraph (b) to read as set forth below;

b. Add "[Rule 604.]" to the end of paragraph (g).

§ 502.604 Compromise of penalties: Relation to a assessment proceedings.

(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. * * *

64. Amend § 502.605 as follows:

a. Revise paragraph (a) to read as set forth below:

b. Add "[Rule 605.]" to the end of paragraph (c).

§ 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.

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

1. Redesignate part 571 as part 545.

2. The authority citation for redesignated part 545 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

3. In redesignated § 545.1, revise paragraph (a) to read as follows:

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to

enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(10) of the 1984 Act prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98-31856 Filed 12-1-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[STB Ex Parte No. 580]

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) proposes to modify its tariff filing regulations to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission (FMC) Automated Tariff Filing and Information System (ATFI), which is being phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs electronically. DATES: Comments are due January 4, 1999.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 580 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 565-1578. TDD for the hearing impaired: (202) 565-1695.1

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (1995), transferred from the FMC to the Board the responsibility for regulating port-to-port water carriage in the noncontiguous domestic trade. In connection with the