

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: Final rule.

SUMMARY: The Federal Maritime Commission is making 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. This rule modifies part 502 (Rules of Practice and Procedure) and redesignates part 571 as part 545 (Interpretations and Statements of Policy).

DATES: Effective May 1, 1999.

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 published a notice of proposed rulemaking on December 12, 1998, 63 FR 66512, to redesignate part 571 as part 545 and amend parts 502 and 545 of the Commission's rules.

The Commission received comments in response to the proposed rule from the National Industrial Transportation Leagues ("NIT League"), the Council of European and Japanese National Shipowners' Associations ("CENSA"), the Maritime Administrative Bar Association ("MABA"), Fruit Shippers Ltd., and jointly from American President Lines, Ltd. and APL Co. Pte Ltd ("APL").

CENSA and NIT League both commented on proposed §502.67, which implements the exemption provision in section 16 of the 1984 Act. Section 16 provides:

"[t]he 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 this Act or any specified activity of those persons from any requirement of this Act"

CENSA objects to the proposed rule because it perceives that by moving §502.67 from part 572 to part 502, the Commission has made exemptions generally available to matters other than agreements. CENSA claims this goes beyond the Commission's exemption power. It is true that the Commission's rules have heretofore addressed exemption procedures only within the agreement provisions currently within part 572. However, section 16 has always authorized the Commission to exempt persons subject to the 1984 Act from any of its requirements, and the Commission has indeed granted isolated exemptions from such matters as tariff filing requirements, when the statutory standards were met. OSRA did not preclude the application of section 16 to any provision or requirement of the 1984 Act. OSRA simply changed the standards

that must be met in order to grant an exemption. The new standard requires that a proposed exemption not result in substantial reduction in competition or be detrimental to commerce. The proposed rule located the procedure for requesting an exemption in §502.67, and that procedure is applicable to all exemption requests, consistent with our statutory authority, not only agreement exemption requests.

NIT League also objects to proposed § 502.67. NIT League points out that the use of the word "may" in the first sentence of proposed § 502.67 could be read to mean that the Commission may decide not to grant an exemption even if a requested exemption meets the standards of section 16 of the 1984 Act. NIT League proposes language requiring that the Commission grant an exemption whenever it finds the standards have been met. NIT League proposes to change the word "may" to "shall," so that the rule would read, "The Commission . . . shall . . . exempt" However, section 16 does not mandate that the Commission grant exemptions. It specifically contains the word "may" and not the word "shall," thus making clear that the decision whether to grant an exemption is discretionary. The proposed rule mirrors the 1984 Act, as amended by OSRA, in this respect. Hence, NIT League's assertion that the Commission must grant an exemption when it finds a requested exemption will not result in substantial reduction in competition or be detrimental to commerce is not consistent with section 16, and the Commission therefore declines to modify proposed §502.67.

MABA commented extensively on the proposed rules concerning service of process, length of briefs, incorporation of the Model Rules of Professional Conduct, the length and cost of proceedings, and the use of promissory notes in payment of penalties. MABA strongly objects to changes proposed to §502.113 which would allow for a complainant to effect service when the

Secretary is not successful in obtaining service by mail. MABA claims that the proposed amendment shifts the burden of service from the Commission to private litigants. However, the proposed modification would merely allow for service by the complainant as a viable option. Historically, the Secretary serves complaints by mail, and will continue to do so. Currently, the Commission's complaint filing rules require the complaint to specify the name and address of each respondent. It is necessary for the complainant to provide the address for each respondent so that the complaint may be served by mail. Sometimes, however, a respondent cannot be located at the provided address and the complaint ends up being returned. At such times, the Secretary works with the complainant to attempt to locate the respondent, so that service may be obtained. Although this practice will continue, the proposed amendment will allow for the possibility of service by the complainant. The Secretary has not made a practice of effecting personal service and is in no better position to do so than any complainant. Contrary to MABA's assertions, the Commission no longer has field offices, and the five area representatives around the country are not available for the purpose of serving complaints.

MABA also asserts that the Commission might use its Regulated Persons Index (RPI) to facilitate personal service. However, parties regulated by the Commission and listed in the RPI are rarely unavailable for mail service. The difficulty in serving by mail arises when the respondent is not regulated by the Commission, or has relocated its business without informing the Commission, thus rendering the RPI ineffective in locating a respondent. The language of the final rule is slightly modified, however, in an attempt to clear up confusion.

Proposed §§ 502.221 and 502.227 would limit briefs to an Administrative Law Judge and to the Commission on exceptions to fifty (50) pages in length, unless, for good cause shown, the

presiding officer grants a request to exceed the limit. In its comments, MABA objects to these limits.

With respect to §502.221, MABA suggests that it is unrealistic to expect an evidentiary record before an Administrative Law Judge to be encapsulated in a useful way within fifty pages that adequately develops legal issues, especially in a proceeding where the case will be developed on a written record without actual "hearing." MABA also cites research indicating that other agencies do not impose page limitations on briefs before the presiding officer following an evidentiary hearing.

The evidentiary record in proceedings generally is not developed on the basis of briefs. Evidence is admitted in the form of written or oral testimony, with transcripts of oral testimony available, and the admission of documentary evidence. The Commission believes that, in most cases, lengthy briefs are not required to fully discuss the issues. It is not necessary to include within briefs evidence already admitted. However, the proposed rule allows the presiding officer to permit longer briefs where warranted. In light of MABA's concerns, however, the final rule expands the page limit for such briefs to eighty (80) pages. The Commission believes this measure will encourage efficiency and focus in proceedings which have become increasingly time consuming and costly.

With respect to §502.227, MABA believes a page limitation on briefs to the Commission, is a "closer question," and cites four other agencies who do impose such limitations. They are the National Labor Relations Board, Occupational Safety and Health Administration, Securities and Exchange Commission, and Surface Transportation Board. As MABA points out, the Commission is not limited to identified issues of error, as a court of appeals would be, when

reviewing a matter on exceptions. MABA recognizes that the Commission is, indeed, the ultimate fact finder in such instances. In reality, however, when reviewing such matters the Commission has the developed record before it, including briefs previously filed with the presiding Administrative Law Judge. We believe it is unnecessary to retrace an entire proceeding in a brief on exceptions. Rather, such briefs should focus on the exceptions to the initial decision. Therefore, in the interest of efficiency and lower costs of proceedings, the final rule maintains the proposed fifty (50) page limitation on briefs on exceptions. It should be noted, however, that the rule provides that parties may request to be allowed to exceed the limitation for good cause, upon timely application.

MABA strongly supports the proposed incorporation of the American Bar Association's Model Rules of Professional Conduct into §502.26, but requests that the Commission establish a procedure to handle complaints arising under §§ 502.26 and 502.30, the latter of which provides sanctions. As MABA points out, the presiding administrative law judge has dealt with ethical complaints when they arise in the course of a proceeding. MABA believes this may be appropriate in some circumstances, but awkward for the presiding officer and prejudicial to an attorney's client in other circumstances. MABA avers that the procedure can also deter a party from making a legitimate ethical complaint to an administrative law judge. MABA seeks a separate and impartial procedure to hear ethical complaints. Currently, no party is barred from bringing violations to the attention of the Commission. As MABA recognizes, certain questions are appropriate for resolution in the course of a proceeding by the presiding officer. Should there be a complaint, however, that the complaining party believes should be handled separately and independently from a proceeding, a filing, whether by petition or other written document, should

be submitted to the Commission's Secretary, just as any other filing would be. The Secretary, in consultation with appropriate Commission officials, will arrange for consideration of the complaint within the Commission.

MABA also requests clarification that §502.26 applies to both private attorneys and Commission attorneys. Neither the current or proposed §502.26 differentiates between a Commission and private attorney, and no clarification in the rule appears warranted.

In a more general comment, MABA encourages the Commission "to consider ways of reducing the length and cost of its proceedings," citing increasingly costly and time consuming proceedings. MABA suggests that Administrative Law Judges be given greater power to prevent unnecessary delay and expense. In addition, MABA recommends the Commission consider forming a public-private task force or advisory committee to recommend steps to reduce the length and cost of Commission proceedings. The Commission recognizes MABA's concerns, but does not believe an advisory committee, itself a costly undertaking, is warranted at the present time. The Administrative Law Judges currently possess authority to manage proceedings efficiently. As MABA recognizes, the Commission has procedural rules requiring expedited discovery, and the increasing complexity of proceedings, budget cutbacks and due process concerns all affect the length and cost of proceedings. Litigants' attorneys, however, play a major role in assuring that deadlines in proceedings are met and costs to their clients are kept down. Ultimately, the cooperation among parties and their counsel in discovery, a commitment to meet deadlines without requesting additional time, and minimizing the length and number of motions and other filings can have more impact on reducing costs than any rule changes that may

be imposed by the Commission. However, it is believed that the page limitation on briefs and other changes made in these final rules will help reduce the expense of Commission proceedings.

Finally, MABA objects to the removal of the provision allowing for payment of penalties by promissory note, suggesting that the Commission continue to allow such payment where appropriate. Proposed §502.605 would still allow the Commission to accept payment by "other instrument acceptable to the Commission," which could include a promissory note where appropriate. Generally speaking, however, it is not the Commission's policy or preference to accept promissory notes, and therefore adopting MABA's comment may be misleading. Accordingly, this provision is not changed in the final rule.

Fruit Shippers Ltd. commented that changes should be made to the definition of common carrier. However, the term is not defined in parts 502 and 545, and the comments are not applicable to this rulemaking proceeding. The comment will be addressed when the proposed rule in Docket No. 9349, *Carrier Automated Tariff Systems*, 63 FR 70368, is finalized. APL asked for leave to file a comment late in order to point out an error in terminology in §545.1. The nature of the comment, pointing out an obvious error, requires that it be accepted, even though filed late, and the error is corrected by replacing the term "conference" with the OSRA terminology "an agreement between or among ocean common carriers" in §545.1.

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

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small

Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify this rulemaking because the amendments would 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*. The comments received did not dispute the Commission's intention to certify, therefore, the certification is continued.

This regulatory action is not a "major" rule under 5 U.S.C. 804(2).

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 amends 46 CFR parts 502, 545 and 571 as set forth below:

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 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 (b)(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:

§ 582.21 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:

§ 582.42 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.]

§ 502.56 [Amended]

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

§ 502.61 [Amended]

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 set forth below;
- b. Add "[Rule 64.]" to the end of paragraph (d).

§ 502.64 Answer to complaint; countercomplaint.

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

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 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 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:

§ 562.75 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:

§ 582.111 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 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:

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

(c) In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding.

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

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:

§ 582.133 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 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 § 502.182, 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 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 1984. 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:

§ 502.221 Briefs; requests for findings.

* * * * *

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

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 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 set forth below.

§ 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.]

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 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. ***

(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; or the name of the carrier if the applicant is a shipper] by delivering a copy [insert means by which copy delivered].

Dated in [insert city, county, state] this _____ day of _____

[signature]

For:

CERTIFICATE OF MAILING

I certify that the date shown below is the date of mailing [or date of delivery to courier] of the original and one (1) copy of this application to the Secretary, Federal Maritime Commission, Washington, DC, 20573-0001.

Dated at _____, this ____ day ____ of ____.

[Signature].

For .

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 305.1

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. 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. 843 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. * * *

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 set forth below;
- b. Add "[Rule 602.]" 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.

* * * * *

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:

§ 592.604 Compromise of penalties: Relation to assessment proceedings.

* * * * *

(b) 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) 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.

Part 545 - Interpretations and Statements of Policy

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.

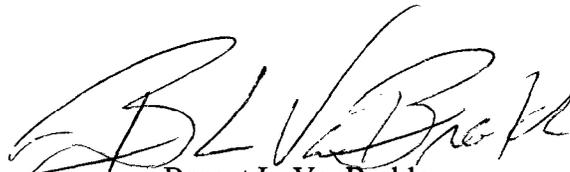
3. In redesignated § 545.1, revise paragraph (a) to read as follows:

§ 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.


Bryant L. VanBrakle
Secretary

98-21 Plochy

Order 12898, entitled *Fed&al A&ions to Address Environmental J&ice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997)

In additions, since tolerance exemptions that are established on the basis of a petition under section 408(d) of the FFCA, such as the exemption in this final rule, do not require the issuance of a proposed rule. The requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless: the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for the tolerance actions published on May 4, 1991 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing tie Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by these governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process perbitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1 (a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests, Reporting and recordkeeping requirements.

Dated January 19, 1999.

Kathleen Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2 Section 180.1156 is revised to read as follows

180.1156 Cinnamaldehyde; exemption from the requirement of a tolerance.

Cinnamaldehyde (3-phenyl-2-propenal) is exempted from the requirement of a tolerance in or on all food commodities, when used as a fungicide, insecticide, and algacide in accordance with good agricultural practices. The existing tolerance exemption on mushrooms (40 CFR 180.1156) is hereby removed.

[FR Doc. 99-3663 Filed 2-16-99; 8:45 am]

BILLING CODE 6666-66-F

FEDERAL MARITIME COMMISSION

48 CFR Parts 502, 545 and 571

[Docket No. 98-21]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is making 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. This rule modifies part 502 (Rules of Practice and Procedure) and redesignates part 571 as part 545 (Interpretations and Statements of Policy).

DATES: Effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573-0001, (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 published a notice of proposed rulemaking on December 2, 1998, 63 FR 66512, to redesignate part 571 as part 545 and amend parts 502 and 545 of the Commission's rules.

The Commission received comments in response to the proposed rule from the National Industrial Transportation Leagues ("NIT League"), the Council of European and Japanese National Shipowners' Associations ("CENSA"), the Maritime Administrative Bar Association ("MABA"), Fruit Shippers Ltd., and jointly from American President Lines, Ltd. and APL CO. Pte Ltd ("APL").

CENSA and NIT League both commented on proposed § 502.67, which implements the exemption provision in section 16 of the 1964 Act. Section 16 provides:

"(t)he 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 this Act or any specified activity of those persons from any requirement of this Act ***."

CENSA objects to the proposed rule because it perceives that by moving § 502.67 from part 572 to part 502, the Commission has made exemptions generally available to matters other than agreements. CENSA claims this goes beyond the Commission's exemption power. It is true that the Commission's rules have heretofore addressed exemption procedures only with the agreement provisions currently within part 572. However, section 16 has always authorized the Commission to exempt persons subject to the 1964 Act from any of its requirements, and the Commission has indeed granted isolated exemptions from such matters as tariff filing requirements, when the statutory standards were met. OSRA did not preclude the application of section 16 to any provision or requirement of the 1964 Act. OSRA simply changed the standards that must be met in order to grant an exemption. The new standard requires that a proposed exemption not result in substantial reduction in competition or be detrimental to commerce. The proposed rule located the procedure for requesting an exemption in § 502.67, and that procedure is applicable to all exemption requests, consistent with our statutory authority, not only agreement exemption requests.

NIT League also objects to proposed § 502.67. NIT League points out that the

use of the word "may" in the first sentence of proposed § 502.67 could be read to mean that the Commission may decide not to grant an exemption even if a requested exemption meets the standards of section 16 of the 1964 Act. NIT League proposes language requiring that the Commission grant an exemption whenever it finds the standards have been met. NIT League proposes to change the word "may" to "shall." so that the rule would read, "The Commission *** shall *** exempt ***." However, section 16 does not mandate that the Commission grant exemptions. It specifically contains the word "may" and not the word "shall," thus making clear that the decision whether to grant an exemption is discretionary. The proposed rule mirrors the 1964 Act, as amended by OSRA, in this respect. Hence, NIT League's assertion that the Commission must grant an exemption when it finds a requested exemption will not result in substantial reduction in competition or be detrimental to commerce is not consistent with section 16, and the Commission therefore declines to modify proposed § 502.67.

MABA commented extensively on the proposed rules concerning service of process, length of briefs, incorporation of the Model Rules of Professional Conduct, the length and cost of proceedings, and the use of promissory notes in payment of penalties. MABA strongly objects to changes proposed to § 502.113 which would allow for a complainant to effect service when the Secretary is not successful in obtaining service by mail. MABA claims that the proposed amendment shifts the burden of service from the Commission to private litigants. However, the proposed modification would merely allow for service by the complainant as a viable option. Historically, the Secretary serves complaints by mail, and will continue to do so. Currently, the Commission's complaint filing rules require the complainant to specify the name and address of each respondent. It is necessary for the complainant to provide the address for each respondent so that the complaint may be served by mail. Sometimes, however, a respondent cannot be located at the provided address and the complaint ends up being returned. At such times, the Secretary works with the complainant to attempt to locate the respondent, so that service may be obtained. Although this practice will continue, the proposed amendment will allow for the possibility of service by the complainant. The Secretary has not made a practice of effecting personal

service and is in no better position to do so than any complainant. Contrary to MABA's assertions, the Commission no longer has field offices, and the five area representatives around the country are not available for the purpose of serving complaints.

MABA also asserts that the Commission might use its Regulated Persons Index (RPI) to facilitate personal service. However, parties regulated by the Commission and listed in the RPI are rarely unavailable for mail service. The difficulty in serving by mail arises when the respondent is not regulated by the Commission, or has relocated its business without informing the Commission, thus rendering the RPI ineffective in locating a respondent. The language of the final rule is slightly modified, however, in an attempt to clear up confusion.

Proposed §§ 502.221 and 502.222 would limit briefs to an Administrative Law Judge and to the Commission on exceptions to fifty (50) pages in length, unless, for good cause shown, the presiding officer grants a request to exceed the limit. In its comments, MABA objects to these limits.

With respect to § 502.221, MABA suggests that it is unrealistic to expect an evidentiary record before an Administrative Law Judge to be encapsulated in a useful way with fifty pages that adequately develops legal issues, especially in a proceeding where the case will be developed on a written record without actual "hearing." MABA also cites research indicating that other agencies do not impose page limitations on briefs before the presiding officer following an evidentiary hearing.

The evidentiary record in proceedings generally is not developed on the basis of briefs. Evidence is admitted in the form of written or oral testimony, with transcripts of oral testimony available, and the admission of documentary evidence. The Commission believes that, in most cases, lengthy briefs are not required to fully discuss the issues. It is not necessary to include within briefs evidence already admitted. However, the proposed rule allows the presiding officer to permit longer briefs where warranted. In light of MABA's concerns, however, the final rule expands the page limit for such briefs to eighty (80) pages. The Commission believes this measure will encourage efficiency and focus in proceedings which have become increasingly time consuming and costly.

With respect to § 502.227, MABA believes a page limitation on briefs and the Commission, is a "closer question," and cites four other agencies who do

impose such limitations. They are the National Labor Relations Board, Occupational Safety and Health Administration, Securities and Exchange Commission, and Surface Transportation Board. As MABA points out, the Commission is not limited to identified issues of error, as a court of appeals would be, when reviewing a matter on exceptions. MABA recognizes that the Commission is, indeed, the ultimate fact finder in such instances. In reality, however, when reviewing such matters the Commission has the developed record before it, including briefs previously filed with the presiding Administrative Law Judge. We believe it is unnecessary to retrace an entire proceeding in a brief on exceptions. Rather, such briefs should focus on the exceptions to the initial decision. Therefore, in the interest of efficiency and lower costs of proceedings, the final rule maintains the proposed fifty (50) page limitation on briefs on exceptions. It should be noted, however, that the rule provides that parties may request to be allowed to exceed the limitation for good cause, upon timely application.

MABA strongly supports the proposed incorporation of the American Bar Association's Model Rules of Professional Conduct into § 502.26, but requests that the Commission establish a procedure to handle complaints arising under §§ 502.26 and 502.30, the latter of which provides sanctions. As MABA points out, the presiding administrative law judge has dealt with ethical complaints when they arise in the course of a proceeding. MABA believes this may be appropriate in some circumstances, but awkward for the presiding officer and prejudicial to an attorney's client in other circumstances. MABA avers that the procedure can also deter a party from making a legitimate ethical complaint to an administrative law judge. MABA seeks a separate and impartial procedure to hear ethical complaints. Currently, no party is barred from bringing violations to the attention of the Commission. As MABA recognizes, certain questions are appropriate for resolution in the course of a proceeding by the presiding officer. Should there be a complaint, however, that the complaining party believes should be handled separately and independently from a proceeding, a filing, whether by petition or other written document, should be submitted to the Commission's Secretary, just as any other filing would be. The Secretary, in consultation with appropriate Commission officials, will arrange for

consideration of the complaint within the Commission.

MABA also requests clarification that § 502.26 applies to both private attorneys and Commission attorneys. Neither the current or proposed § 502.26 differentiates between a Commission and private attorney, and no clarification in the rule appears warranted.

In a more general comment, MABA encourages the Commission "to consider ways of reducing the length and cost of its proceedings," citing increasingly costly and time consuming proceedings. MABA suggests that Administrative Law Judges be given greater power to prevent unnecessary delay and expense. In addition, MABA recommends the Commission consider forming a public-private task force or advisory committee to recommend steps to reduce the length and cost of Commission proceedings. The Commission recognizes MABA's concerns, but does not believe an advisory committee, itself a costly undertaking, is warranted at the present time. The Administrative Law Judges currently possess authority to manage proceedings efficiently. As MABA recognizes, the Commission has procedural rules requiring expedited discovery, and the increasing complexity of proceedings, budget cutbacks and due process concerns all affect the length and cost of proceedings. Litigants' attorneys, however, play a major role in assuring that deadlines in proceedings are met and costs to their clients are kept down. Ultimately, the cooperation among parties and their counsel in discovery, a commitment to meet deadlines without requesting additional time, and minimizing the length and number of motions and other filings can have more impact on reducing costs than any rule changes that may be imposed by the Commission. However, it is believed that the page limitation on briefs and other changes made in these final rules will help reduce the expense of Commission proceedings.

Finally, MABA objects to the removal of the provision allowing for payment of penalties by promissory note, suggesting that the Commission continue to allow such payment where appropriate. Proposed § 502.605 would still allow the Commission to accept payment by "other instrument acceptable to the Commission," which could include a promissory note where appropriate. Generally speaking, however, it is not the Commission's policy or preference to accept promissory notes, and therefore adopting MABA's comment may be misleading. Accordingly, this

provision is not changed in the final rule.

Fruit Shippers Ltd. commented that changes should be made to the definition of common carrier. However, the term is not defined in parts 502 and 545, and the comments are not applicable to this rulemaking proceeding. The comment will be addressed when the proposed rule in Docket No. 98-29, *Carrier Automated Tariff Systems*, 63 FR 70368, is finalized. APL asked for leave to file a comment late in order to point out an error in terminology in § 545.1. The nature of the comment, pointing out an obvious error, requires that it be accepted, even though filed late, and the error is corrected by replacing the term "conference" with the OSRA terminology "an agreement between or among ocean common carriers" in § 545.1.

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

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify this rulemaking because the amendments would 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. The comments received did not dispute the Commission's intention to certify, therefore, the certification is continued.

This regulatory action is not a "major" rule under 5 U.S.C. 804(2).

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 amends 46 CFR parts 502, 545 and 571 as set forth below:

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, 571–593, 12 U.S.C. 1141j(a), 18 U.S.C. 207; 28 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 (39 FR 6459); 21 U.S.C. 853a; Pub. L. 165–258; and Pub. L. 88–777 (46 U.S.C. 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 2.1]”

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 rule in this part shall be returned to the sender. [Rule 2.1]

4. Amend § 502.1 as follows:

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

b. Remove paragraph (a) and the heading of paragraph (b);

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

§ 502.11 Ex parte communications.

* * * * *

§ 502.12 [Amended]

5. In § 502.12, add “[Rule 12.1]” 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 42.1

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.]

§ 502.56 [Amended]

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

502.61 [Amended]

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 62.1

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

§ 502.64 Answer to complaint; counterclaim.

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

19. Add § 502.67 to read as follows

§ 602.67 Exemption procedures-General.

(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, DC; and

(5) The final date for filing comments regarding the proposal. [Rule 67.]

§ 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 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.
* * * * *

Exhibit 1 to Subpart E [Amended]

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 * * *."

§ 502.91 [Amended]

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

§ 502.92 [Removed and reserved] Exhibit 1 [Removed]

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

§ 502.94 [Amended]

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 562.227.

(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 § 562.74. [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 105.1

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

(c) In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding.

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

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.

§ 562.114 [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. 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:

§ 502.116 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 author's request for 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 133.1]

5502.143 [Amend@]

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 to read as set forth below;

c. Revise the last sentence of newly 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 § 502.182, or upon referral under subpart T of this part, or

(b) 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, 1938."

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 set forth below.

b. Revise the paragraph headings in paragraph (d) and (f) to read as follows.

§ 302.201 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.

(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:

§ 502.221 Briefs; requests for findings.

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

45. Revise § 502.223 to read as follows

§ 562.223 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 223.1]

46. Revise § 502.225 to read as follows:

§ 562.225 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 set forth below.

§ 502.227 Exceptions to decisions of 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.]

48. Revise § 502.253 to read as follows:

5502.253 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 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.

(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 consisting of § 502.271 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 § 50.1.2.1 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).

(1) 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 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; or the name of the carrier if the applicant is a shipper) by delivering a copy (insert means by which copy delivered) Dated in (insert city, county, state) this _____ day of _____ (signature)

For: CERTIFICATE OF MAILING I certify that the date shown below is the date of mailing (or date of delivery to courier) of the original and one (1) copy of this application to the Secretary, Federal Maritime Commission, Washington, DC, 20573-0001.

Dated at _____, this _____ day of _____ (Signature) For:

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

5502.302 [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, of this part do not apply to situations covered by this subpart. [Rule 305.]

Exhibit 1 to 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.]

§ 502.402 [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. 843 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 * * *

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

§ 502.503 [Amended]

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 Pub. L. 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 set forth below;

b. Add "[Rule 602.]" 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 Pub. L. 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 Pub. L. 89-777.

§ 502.603 [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 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 § 502805 as follows:

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

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 [REDESIGATED AS PART 545]

1. Redesignate part 571 as part 545.

PART 545—Redesignated from Part 571 and Amended

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
Bryant L. VanBrakle,
Secretary.

[FR Doc 99-3621 Filed 2-16-99; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-90; RM-90701

Radio Broadcasting Services; Dayton, WA and Weston, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dayton Broadcasting Company, substitutes Channel 270C2 for Channel 272A at Dayton, Washington, reallots Channel 270C2 from Dayton to Weston, Oregon, and modifies Station KZZM(FM)'s license accordingly. See 63 FR 34620, June 25, 1998. Channel 270C2 can be reallocated to Weston in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested transmitter site. The coordinates for Channel 270C2 at Weston are 45-47-12 North Latitude and 118- 15-46 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 22, 1999

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 4 18-2 180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98-90, adopted January 27, 1999, and released February 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows

PART-73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows.

Authority: 47 U.S.C. 154, 303,334, 336

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Weston, Channel 270C2.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 272A at Dayton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc 99-3783 Filed 2- 16-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Office Of The Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-297]

Organization and Delegation of Powers and Duties Delegation to the Commandant, United States Coast Guard, the Federal Railroad Administrator, and the Federal Highway Administrator

AGENCY: Office of the Secretary, DOT.
ACTION: Final rule

SUMMARY: The Secretary is delegating his authority under section 346 of the Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105-66 (October 27, 1997) to the Commandant of the U. S. Coast Guard, the Federal Railroad Administrator, and the Federal Highway Administrator. Section 346 authorizes the Secretary of Transportation to establish, operate, and manage a nationwide system to be known as the "Nationwide Differential Global Positioning System" (NDGPS) as soon as practicable, to integrate the NDGPS reference stations into the Continuously Operating Reference Station (CORS) system of the National Geodetic Survey of the Department of Commerce, and to investigate the use of the NDGPS reference stations for the Global Positioning System Integrated Precipitable Water Vapor System of the National Oceanic and Atmospheric Administration of the Department of Commerce.

EFFECTIVE DATE: February 17, 1999.

FOR FURTHER INFORMATION CONTACT: John Macaluso, Office of the Secretary of Transportation (P-7) Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Phone: (202) 366-0362.

SUPPLEMENTARY INFORMATION: With the two exceptions noted later in this document, the authority of the Secretary in Section 346 to establish, operate, and manage the NDGPS, should be delegated to the Commandant of the Coast Guard,