Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 6, 1984, at 10:00 a.m., will be:

Formal orders of investigation.
Recommendation regarding enforcement matter.
Regulatory matter bearing enforcement implications.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, November 8, 1984, following the 2:30 p.m. open meeting, will be: Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, November 7, 1984, at 2:30 p.m., will be:

The Commission, as part of its active oversight of private sector standard-setting activities, will meet with members of the Financial Accounting Standards Board regarding the Board's technical agenda and other items of mutual interest. In addition to a discussion of major projects on the FASB's technical agenda, aspects of the conceptual framework project, accounting problems of financial institutions, and the FASB's new approach to providing timely guidance are expected to be discussed. Timely guidance procedures now in place include monthly meetings of an emerging issues task force and expanded use of FASB technical bulletins. These procedures are designed to increase the FASB's effectiveness in providing accounting and reporting guidance on emerging accounting issues. For further information, please contact Robert Kueppers at (202) 272–2130.

The subject matter of the open meeting scheduled for Thursday, November 8, 1984, at 10:00 a.m., will be:

1. Consideration of whether to grant or deny a request by the National Association of Securities Dealers, Inc. ("NASD") for reconsideration of a Commission finding made in a fee dispute between the NASD and the Institutional Networks Corporation ("Instinet") regarding the terms of Instinet's access to full NASDAQ quotation information. For further information, please contact William W. Uchimoto at (202) 272–2409.
2. Consideration of whether to propose for public comment amendments to Form N–1A under the Investment Company Act of 1940 to consolidate all narrative information in mutual fund prospectuses concerning significant expenses and add a tabular presentation of the major expense items. For further information, please contact Mary Margaret W. Hammond at (202) 272–3045.
3. Consideration of whether to adopt on a temporary basis and propose for public comment Rule 6e–3(T) and related technical amendments to a rule and form under the Investment Company Act of 1940 which would permit insurance company separate accounts to sell a new type of insurance product known as flexible premium variable life insurance. For further information, please contact Robert W. Plaze at (202) 272–2622.
4. Consideration of whether to grant an application filed by Vanguard Special Tax-Advantaged Retirement Fund, et al. requesting an order of the Commission, pursuant to Sections 6(c) and 17(d) and Rule 17d–1 of the Investment Company Act of 1940, to permit the Vanguard Special Tax-Advantaged Retirement Fund to acquire shares of funds within the Vanguard Group of Investment Companies in excess of the limitations imposed by Section 12(d)(1) of the Act, and to permit certain affiliated transactions otherwise prohibited by Section 17. On September 11, 1984, the Commission authorized issuance of a notice on the application but requested a resubmission of the application for its reconsideration after expiration of the notice period and after receipt from Applicants of additional supporting information. For further information, please contact Mary A. Cole at (202) 272–3023.

The subject matter of the open meeting scheduled for Thursday, November 8, 1984, at 2:30 p.m., will be:

Oral argument on appeals by Raymond L. Dirks and John D. Sullivan, general partners of John Muir & Company, a registered broker-dealer, from the decision of an administrative law judge. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Fowler at (202) 272–3077.

November 1, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–29196 Filed 11–2–84; 9:07 am]

BILLING CODE 8010–01–M

federal register

Tuesday
November 6, 1984

Part II

Federal Maritime Commission

46 CFR Parts 500, 501, 502, 503, 504, and 505

General and Administrative Provisions; Final Rules in Subchapter A

FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 501, 502, 503, 504, and 505

[Docket No. 84-20 for Part 505]

Final Rules in Subchapter A; General and Administrative Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The Federal Maritime Commission is making substantive changes to its standards of conduct for employees in Part 500 and in § 502.32 and purely technical, non-substantive changes to the rest of Subchapter A involving general and administrative rules of the agency. The parts affected by this rulemaking are Part 500 [Employee Responsibilities and Conduct]; Part 501 [Official Seal]; Part 502 [Rules of Practice and Procedure]; Part 503 [Public Information]; Part 504 [Procedures for Environmental Policy Analysis]; and Part 505 [Compromise, Assessment and Settlement of Civil Penalties]. The new Part 505 finalizes a previously published proposed rule. Except for Part 507, a new proposed rule involving handicapped persons employed by the agency, and which will not become final until 1985, the revision of all of Subchapter A is now completed.

DATE: Effective December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Revisions to all of Subchapter A were previously made by publication of a final rule on April 23, 1984 [40 FR 16994] and a proposed rule completely revising Part 505 [compromise of penalties] was published on May 3, 1984 [49 FR 18874] with a correction on June 1, 1984 [49 FR 22837].

In addition to making necessary, substantive changes to Part 500 [standards of conduct], as well as to parallel provisions in § 502.32, and finalizing the proposed rule on Part 505, a further review of all regulations in conjunction with the passage of the Shipping Act of 1984 on March 20, 1984, has revealed the necessity for further technical changes. These rules, therefore, finalize all of Subchapter A under the revision program, i.e., Parts 500-505, inclusive, and are being set forth here in their entirety. [New Part 507, now a proposed rule dealing with handicapped employees, will become final in 1985.]

Accordingly, extensive changes in form beyond those made in the previous final rules are being made to improve style, readability and understandability. No changes in substance, however, are included, except in Part 500 and its counterpart in § 502.32. Because most of the parts affected involve purely internal agency matter and/or the changes are merely technical or stylistic, the rules are promulgated as final, without the need for comments, although their effective date will be 30 days after publication in the Federal Register.

The technical and style changes to all the rules reflect changes in nomenclature and Commission organization, correction of typographical errors and removal of superfluous verbiage. Outdated and obsolete provisions have also been deleted. To assist the user, various subdivisions of sections have been restructured and renumbered to facilitate citation. Also changed, were feasible, are citations to other laws required by recodifications and other statutory changes; references to the obsolete General Order system; "Provided, howevers"; and gender specific terms.

A part-by-part analysis of other changes follows:

Part 500—Employee Responsibilities and Conduct

The revisions to Part 500 are being made in order to clarify the Commission's general Standards of Conduct. Prior to this revision, the Commission's regulations reflected almost word for word the language used in President Johnson's Executive Order 11222 of May 8, 1965 and the implementing regulations of the Office of Personnel Management at 5 CFR Part 735. The precise application of some of these regulations to the Commission has not always been clear. Thus, this revision constitutes a clarification of existing policy, and, in some respects, substantive changes. It also implements certain requirements of the Ethics in Government Act.

The revisions of Part 500 are deemed necessary in order to ensure the integrity of the agency and its individual employees, to conform to the spirit of the Executive Order, and to provide maximum guidance to Commission employees.

Part 501—Official Seal of the Federal Maritime Commission

The only changes made to this part are statutory citations to reflect changes in law.

Part 502—Rules of Practice and Procedure

The major changes to this part reflect the changes to Part 500 involving practice by former Commission employees before the F.M.C. in section 502.32 which tracks the new restrictions in § 500.12, as well as structural changes to, among others, Subparts S and T, to accommodate the policy of the Shipping Act of 1984 to allow claims or complaints against any person who may have violated the provisions of the new statute.

Otherwise, changes to this part clarify existing regulations, as well as, reflect new provisions of the Shipping Act of 1984 and style and technical changes referred to above. Some forms have been revised to reflect some of the changes in procedure occasioned by the Shipping Act of 1984.

Part 503—Public Information

In addition to style and technical changes described above, § 503.91, containing a table of OMB control numbers under the Paperwork Reduction Act for all parts in Chapter IV, is being deleted because such numbers will now appear in the final section for each individual part affected.

Part 504 [Previously Part 547]—Procedures for Environmental Policy Analysis

In this part, no changes other than technical and style changes described above are being made.

Part 505—Compromise, Assessment, Settlement and Collection of Civil Penalties

This part was the subject of proposed rulemaking in Docket No. 84-20, published in the Federal Register on May 3, 1984 (49 FR 18874) with comments invited. The only comment received was from the National Maritime Council which stated that the proposed rule, if finalized, "... should allow a more expeditious and fair handling of penalty claims." Accordingly, no substantive changes are being made. A note has been added at the end of the rule indicating that the part is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

The Federal Maritime Commission has determined that these rules are not "major rules" as defined in Executive Order 12291 dated February 17, 1981, because none of them will result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that none of these rules will have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects

46 CFR Part 500

Conduct standards, Government employees.

46 CFR Part 501

Seals and insignias.

46 CFR Part 502

Administrative practice and procedure, Reporting and recordkeeping and requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 504

Energy conservation, Environmental protection, Reporting and recordkeeping requirements.

46 CFR Part 505

Fines and penalties.

Corrections

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical-type errors in order that corrections can be made before the Commission's CFR book goes to press in January, 1985.

Therefore, for the reasons discussed in the preamble and pursuant to the authority set forth in the Authority Citation for each part, Title 46, Code of Federal Regulations, Parts 500, 501, 502, 503, 504 and 505 are revised to read as follows:

PART 500—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

Subpart B—General Standards of Conduct

Subpart C—Special Government Employees Standards of Conduct

Subpart D—Statements of Employment and Financial Interests; Executive Personnel Financial Disclosure Reports

Authority: 46 U.S.C. app. 1111, 18 U.S.C. 207, 208; 5 CFR Part 735; E.O. 11222 of May 8, 1965, 30 FR 6469, (3 CFR, 1965 Supp.).

Subpart A—General Provisions

§ 500.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. Reorganization Plan No. 7 of 1961, which established the Federal Maritime Commission, and section 201(b) of the Merchant Marine Act of 1936 (46 U.S.C. app. 1111(b)), provide that officials or employees of the Commission are prohibited from employment with, or to have any pecuniary interest in, or hold any official relationship with, carriers by water, shipbuilder contractors, or other persons, firms, associations or corporations with whom the Commission may have business relations. The following sections of this part are in accordance with the requirements of the Office of Personnel Management's regulations (5 CFR 735) under Executive Order 11222, dated May 8, 1965.

§ 500.102 Definitions.

For the purposes of this part:

(a) "*Commission*" means the Federal Maritime Commission unless otherwise designated.

(b) "*Employee*" means an employee of the Commission but does not include a special Government employee.

(c) "*Executive Order*" means Executive Order 11222 of May 8, 1965.

(d) "*OPM*" means the United States Office of Personnel Management.

(e) "*Person*" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, a foreign government or any other organization or institution.

(f) "*Special Government employee*" means a "special Government employee" as defined in section 202 of Title 18, United States Code, who is employed in the executive branch, but does not include a member of the uniformed services as defined in section 2101 of Title 5, United States Code.

§ 500.103 [Reserved]

§ 500.104 [Reserved]

§ 500.105 Interpretation and advisory service.

(a) The Chairman of the Commission shall designate an employee with the appropriate legal experience and in whom he or she has complete personal confidence to be the Counselor for the Commission on matters in connection

with the regulations in this part. The Counselor shall also serve as the Commission's designee to OPM on matters covered by the regulations in this part. The Counselor shall exercise responsibility for effectuation and coordination of the Commission's regulations and provide counseling and interpretations on questions of conflicts of interest and other matters covered by the regulations in this part.

(b) The Chairman of the Commission shall designate one or more Deputy Counselors who shall be qualified and in a position to give authoritative advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) Employees and special Government employees shall be notified of the availability of counseling services and of how and where these services are available. This notification shall be made within ninety (90) days after approval of the regulations in this part and periodically thereafter. In the case of a new employee or special Government employee appointed after this notification, notification shall be made at the time of his or her entrance on duty.

§ 500.106 Reviewing statements and reporting conflicts of interest.

(a) There is hereby established a system for the review of Statements of Employment and Financial Interests, Annual Statements, and Executive Personnel Financial Disclosure Reports submitted under Subpart D of this part. This system of review is designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees or special Government employees.

(b) The Counselor or Deputy Counselor shall review each such Statement and Report. Whenever it appears to the Counselor that a Statement or Report contains evidence of a conflict of interest, he or she shall notify the person signing that statement and shall discuss with him or her the information which gives rise to the apparent or real conflict and offer him or her an opportunity to explain the conflict or appearance of conflict. If the conflict or appearance of conflict is not resolved after this discussion, the information concerning the conflict or appearance of conflict shall be reported to the Chairman of the Commission by the Counselor.

§ 500.107 Disciplinary and other remedial action.

(a) A violation of the regulations in this part by an employee or special Government employee may be cause for an appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) If after consideration of the explanation of the employee as provided in § 500.106, and the Chairman decides that remedial action is required, the Chairman shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, executive orders, and regulations and may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his or her conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

§ 500.108 Conflicts of interest.

A Commission employee's or special Government employee's financial or pecuniary interest in an entity regulated by the Commission [such as, e.g., ocean common carriers, ocean freight forwarders and marine terminal operators (including their parent companies)], shall be deemed to create a conflict of interest. A Commission employee or special Government employee shall also be deemed to have a conflict of interest if a member of his or her immediate household is employed by an entity regulated by the Commission and his or her professional duties or assignments relate to or involve that family member's employer.

§ 500.109 Rereading the Standards of Conduct.

It is the responsibility of every Commission employee and special Government employee to become familiar with the Commission's Standards of Conduct and to reread them at least once a year.

Subpart B—General Standards of Conduct

§ 500.201 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 500.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions to paragraph (a) of this section are as follows:

(1) This section shall not be construed to proscribe conduct involving obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(2) Under this section, Commission employees are permitted to accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(3) Under this section, employees are permitted to accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(4) Under this section employees shall be permitted to accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) An employee shall not solicit contributions from another employee for a gift to an official superior, make a donation as a gift to an official supervisor, or accept a gift from an employee receiving less pay than himself or herself (5 U.S.C. 7351), except that this paragraph does not prohibit the use of a completely voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by

the Constitution and by section 7342 of Title 5, United States Code.

(e) Neither this section nor § 500.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General, dated March 7, 1967 (46 Comp. Gen. 689).

§ 500-203 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his or her Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209). This paragraph does not apply to special Government employees.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive Order, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, and writing (including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of OPM or Board of Examiners for the Foreign Service), that is dependent on information obtained as a result of the employee's Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive Order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Reserved]

(e) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law; or

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 500-204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest in an entity regulated by the Commission as set forth in § 500.108;

(2) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities; or

(3) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive Order, the regulations contained in 5 CFR Part 735, or the regulations in this part.

§ 500.205 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

§ 500.206 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 500.203(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his or her Government employment which has not been made available to the general public.

§ 500.207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by court, or one imposed by law, such as Federal, State or local taxes; and "in a proper and timely manner" means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the dispute debt.

§ 500.208 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 or similar Commission approved activities.

§ 500.209 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 500.210 Miscellaneous statutory provisions.

Each employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of this Commission and of the Government. The attention of Commission employees, is directed to the outside employment restriction in 46 U.S.C. app. 1111(b) and the following statutory provisions relating to ethical and other conduct.

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72A Stat. B12

the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against certain political activities in Subchapter III of Chapter 73 of Title 5 U.S.C., and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 500.211 Release of confidential or nonpublic information.

An employee shall not divulge to any unauthorized person any nonpublic or confidential Commission document or information, including the results of portions of Commission meetings closed to the public pursuant to 76 CFR Part 503, Subpart H, and comments made, information divulged or memoranda prepared incidental to such closed meetings, except pursuant to the procedures of 5 U.S.C. 552, 552a and 552b and 46 CFR Part 503 or as specifically directed by the Commission. Employees are also reminded of the provisions of §§ 555.5 and 555.6 of this Chapter, which relate to confidentiality of information obtained in the course of official Commission audits, and which provide for penalties for disclosure of confidential information.

§ 500.212 Post employment conflict of interest; restriction of activities of certain Federal employees; procedures.

Title V of the Ethics in Government Act proscribes certain activities by certain former federal employees (18 U.S.C. 207). The full text of the statute, OPM regulations and examples of how the restrictions and basic procedures apply are available from the Ethics Counselor. In summary, as applied to former Commission employees, the restrictions and basic procedures are as follows:

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

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

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

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

(b) *Prior consent for appearance.* (1) Prior to making any appearance, representation or communication described in paragraph (a) of this section, and, in addition to the requirements of Subpart B of the Commission's Rules of Practice (§§ 502.21–502.32 of this chapter), every former employee must apply for and obtain prior written consent of the Commission for each proceeding or matter in which such appearance, representation or communication is contemplated. Such consent will be given only if the Commission determines that the appearance, representation or communication is not prohibited by the Act, this section or other provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) To present oral argument; and

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

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

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

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

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

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

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

(ii) Taking other appropriate disciplinary action.

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

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

Subpart C—Special Government Employees Standards of Conduct

§ 500.301 Application to special Government employees.

Unless specifically excepted by rule or by the Chairman of the Commission, the General Standards of Conduct contained in subpart B hereof (§§ 500.201 to 500.212), apply to special Government employees. Each special Government employee shall acquaint himself or herself with the General Standards, with each statute that relates to his or her ethical and other conduct as a special Government employee of the Commission and the Government, and with the following, minimum standards of this subpart governing the ethical and other conduct of special Government employees.

§ 500.302 Special Government employees—Use of Government employment.

A special Government employee shall not use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 500.303 Special Government employees—Use of inside information.

Except as provided in § 500.203(c), a special Government employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself, herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business or financial ties. For the purpose of this paragraph, "inside information" means information obtained under Government authority which has not become part of the body of the public information.

§ 500.304 Special Government employees—Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 500.305 Special Government employees—Gifts.

Except as provided in § 500.203(b), a special Government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the Commission, anything of value as a gift, gratuity, loan, entertainment, or favor for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

Subpart D—Statements of Employment and Financial Interests; Executive Personnel Financial Disclosure Reports

§ 500.401 [Reserved]

§ 500.402 [Reserved]

§ 500.403 Persons required to submit Statements of Employment and Financial Interests.

(a) The Chairman, the Commissioners, and all employees and special Government employees of the Commission, without exception, shall file Statements of Employment and Financial Interests and Annual Statements.

(b) Any employee or special Government employee who thinks his or her position has been improperly included under these regulations as one requiring the submission of a Statement of Employment and Financial Interests and Annual Statements is entitled to a review of this determination.

§ 500.404 [Reserved]

§ 500.405 Time and place for submission of Statements of Employment and Financial Interests.

All Statements of Employment and Financial Interests shall be submitted to the Counselor designated under § 500.105 within thirty (30) days of the effective date of the employee's appointment, except that special Government employees shall submit such Statements on or prior to the effective date of their appointment.

§ 500.406 Annual Statements and Termination Reports.

(a) Changes in, or additions to, employment and financial interests shall be reported in an Annual Statement to be filed no later than May 15 of each year, the reporting period being the previous calendar year, except that special Government employees shall submit such Annual Statements no later than fifteen (15) calendar days following any change in, or addition to, their employment or financial interests.

(b) Notwithstanding the filing of the Annual Statement required by this section, each employee and special Government employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

(c) A Termination Report must also be filed upon an employee's termination of employment, the reporting period being the time which has not been covered by the previous initial or supplementary statement.

§ 500.407 Interests to be reported in Statements of Financial Interests and Annual Statements.

Each Statement of Employment and Financial Interests and each Annual Statement shall include all the employment and financial interests of the person reporting, as well as all employment and financial interests of such person's spouse, minor child, or other member of the immediate household. For the purposes of this section, "members of the immediate household" means those blood relatives of the person reporting who are residents of the person's household. With respect to each position or financial interest reported in the Statement of Employment and Financial Interests and the Annual Statements, the person reporting shall specify whether such position or financial interest is held by: (a) The person reporting, (b) the spouse, (c) a minor child, or (d) a blood relative residing in the household.

§ 500.408 Information not known by the person reporting.

If any information required to be included in a Statement of Employment and Financial Interests or an Annual Statement, including holdings placed in trust, is not known to the person reporting, but is known to another person, the person reporting shall request such other person to submit information on his or her behalf.

§ 500.409 Information exempted.

The regulations in this subpart do not require a person to submit any information in an Annual Statement of Employment and Financial Interests or in an Annual Statement relating to any connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For the purpose of this section, education and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in a person's Statement of Employment and Financial Interests and in the Annual Statement.

§ 500.410 Confidentiality of Statements.

The Commission shall hold each Statement of Employment and Financial Interests, and each Annual Statement, in the strictest confidence. The Commission shall not disclose any information contained in such Statements, except as provided by law. To ensure confidentiality, the Counselor authorized in § 500.105 to retain and review the Statements, shall be the sole custodian of the Statements and shall not disclose or authorize disclosure of information contained therein, except to carry out the purposes of this part.

§ 500.411 Conduct, employment or holdings otherwise prohibited and reporting otherwise required by law.

The submission of a Statement of Employment and Financial Interests or Annual Statement, as required by this subpart, does not in any way excuse the person submitting such Statement, from violations of the criminal provisions of section 208 of Title 18, United States Code, the provisions of section 201(b) of the Merchant Marine Act, 1936, (46 U.S.C. 1111(b)) or the provisions of Subpart B of this Part. Moreover, the submission of any such Statement is in addition to, and not in substitution for, or in derogation of, any similar reporting requirement imposed by law, order, or regulation.

§ 500.412 Executive Personnel Financial Disclosure Reports (SF 278).

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95-521) (the "Act") prescribes a public financial disclosure reporting requirement for certain officers and employees in addition to other requirements of this subpart. The requirements and procedures are set forth in detail in the Act as well as in implementing

regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained in the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees Required to File.* The following Commission employees are required to file the Executive Personnel Financial Disclosure Report:

(1) The five Commissioners;

(2) Officers and employees (including special Government employees) who have served in their position for sixty-one (61) days or more during the preceding calendar year, whose positions are classified and paid at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS–16. This category includes employees of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1).

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(4) Administrative law judges;

(5) Employees in the excepted service in positions which are of a confidential or policymaking character including confidential assistants to the Commissioners, unless their positions have been excluded by the Director of the Office of Government Ethics;

(6) The Designated Agency Ethics Counselor.

(c) *Time of Filing.* (1) Initial appointment—Within five (5) days after transmittal by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within thirty (30) days after first assuming a position described in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this section, a SF 278 must be filed.

(2) *Incumbents.* No later than May 15 annually, a SF 278 must be filed by incumbents of any of the positions listed in Paragraph (b) of this section.

(3) *Terminations.* No later than thirty (30) days after an incumbent of a position listed in Paragraph (b) of this section terminates that position, the individual shall file a SF 278.

(d) *Place of Filing.* All reports required to be filed by this seciton shall be submitted on or before the due date to the designated Agency Ethics Counselor.

(e) *Where to Seek Help.* To seek assistance in completing the Executive Personnel Financial Disclosure Report, an employee may contact the Commission Ethics Counselor or the Deputy Ethics Counselor.

(f) *Failure to Submit Report.* Falsification of, or knowing or willful failure to file or report information required to be reported by section 202 of the Act may subject the individual to a civil penalty and to internal disciplinary action, as well as criminal penalties under 18 U.S.C. 1001.

PART 501—OFFICIAL SEAL OF THE FEDERAL MARITIME COMMISSION

Sec.
501.1 Purpose.
501.2 Description.
501.3 Design.

Authority: 46 U.S.C. app. 1111 and 1114; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 501.1 Purpose.

To prescribe and give notice of the official seal of the Federal Maritime Commission.

§ 501.2 Description.

(a) Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Federal Maritime Commission hereby prescribes its official seal, as adopted by the Commission on August 14, 1961, the design of which is illustrated below and described as follows:

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

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

§ 501.3 Design.

PART 502—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Information

Sec.
502.1 Scope of rules in this part.
502.2 Mailing address; hours; filing of documents.
502.3 Compliance with rules or orders of Commission.
502.4 Authentication of rules or orders of Commission.
502.5 [Reserved]
502.6 [Reserved]
502.7 Documents in foreign languages.
502.8 Denial of applications and notice thereof.
502.9 Suspension, amendment, etc., of rules in this part.
502.10 Waiver of rules in this part.
502.11 Disposition of improperly filed documents and ex parte communications.

Subpart B—Appearance and Practice Before the Commission

502.21 Appearance.
502.22 Authority for representation.
502.23 Notice of appearance; written appearance; substitutions.
502.24 Practice before the Commission defined.
502.25 Presiding officer defined.
502.26 Attorneys at law.
502.27 Persons not attorneys at law.
502.28 Firms and corporations.
502.29 Hearings.
502.30 Suspension or disbarment.
502.31 Statement of interest.
502.32 Former employees.

Exhibit No. 1 to Subpart B [§§ 502.23, 502.26, 502.27]—Notice of Appearance

Subpart C—Parties

Sec.
502.41 Parties; how designated.
502.42 Hearing Counsel.
502.43 Substitution of parties.
502.44 Necessary and proper parties in certain complaint proceedings.

Subpart D—Rulemaking

502.51 Petition for issuance, amendment, or repeal of rule.
502.52 Notice of proposed rulemaking.
502.53 Participation in rulemaking.
502.54 Contents of rules.
502.55 Effective date of rules.

Subpart E—Proceedings; Pleadings; Motions; Replies

502.61 Proceedings.
502.62 Complaints and fee.
502.63 Reparation; statute of limitations.
502.64 Answer to complaint.
502.65 Replies to answers not permitted.
502.66 Order to show cause.
502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.
502.68 Declaratory orders and fee.
502.69 Petitions—general and fee.

Exhibit No. 1 to Subpart S [§ 502.304 (a)]—Small Claim Form for Informal Adjudication and Information Checklist

Exhibit No. 2 to Subpart S [§ 502.304(e)]—Respondent's Consent Form for Informal Adjudication

Subpart T—Formal Procedure for Adjudication of Small Claims

Subpart U—Conciliation Service

Subpart V—Paperwork Reduction Act

Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707–1711, 1713–1716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

Subpart A—General Information

§ 502.1 Scope of rules in this part.

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

§ 502.2 Mailing address; hours; filing of documents.

(a) Documents required to be filed in, and correspondence relating to, proceedings governed by this part should be addressed to "Federal Maritime Commission, Washington, D.C. 20573." The hours of the Commission are from 8:30 a.m. to 5 p.m., Monday to Friday, inclusive, unless otherwise provided by statute or executive order.

(b) Documents relating to matters pending before the Commission are to be filed with the Office of the Secretary, unless otherwise required by § 502.118(b)(4), in the case of exhibits in formal proceedings. Pleadings, correspondence or other documents relating to pending matters should not be submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration. [Rule 2.]

§ 502.3 Compliance with rules or orders of Commission.

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

§ 502.4 Authentication of rules or orders of Commission.

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

§ 502.5 [Reserved]

§ 502.6 [Reserved]

§ 502.7 Documents in foreign languages.

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

§ 502.8 Denial of applications and notice thereof.

Except in affirming a prior denial or where the denial is self-explanatory, prompt written notice will be given of the denial in whole or in part of any written application, petition, or other request made in connection with any proceeding under this part, such notice to be accompanied by a simple statement of procedural or other grounds for the denial, and of any other or further administrative remedies or recourse applicant may have where the denial is based on procedural grounds. [Rule 8.]

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

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

§ 502.10 Waiver of rules in this part.

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

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

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

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

(2) No Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any agency proceeding, shall make or knowingly cause to be made to any interested persons outside the Commission or to any party to the proceeding or its agent or to any direct participant in a proceeding, an ex parte communication

relevant to the merits of the proceeding. This prohibition shall not be constructed to prevent any action authorized by paragraphs (b)(5), (b)(6) and (b)(7) of this section;

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

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

(i) All such written communications;

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

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

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

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

(7) An ex parte communication shall not constitute a part of the record for decision. The Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly caused such violation to occur and may take such other action as may be appropriate under the circumstances. [Rule 11.]

Subpart B—Appearance and Practice Before the Commission

§ 502.21 Appearance.

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

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

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

§ 502.22 Authority for representation.

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

§ 502.23 Notice of appearance; written appearance; substitutions.

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

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

§ 502.24 Practice before the Commission defined.

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

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

§ 502.25 Presiding officer defined.

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

§ 502.26 Attorneys at law.

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

§ 502.27 Persons not attorneys at law.

(a) Any person who is not an attorney at law may be admitted to practice before the Commission if he or she is a citizen of the United States and files proof to the satisfaction of the Commission that he or she possesses the necessary legal, technical, or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the

presentation of matters before the Commission. Applications by persons not attorneys at law for admission to practice before the Commission shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Commission, and shall be addressed to the Federal Maritime Commission, Washington, D.C., 20573, and shall be accompanied by a fee as required by § 503.43(h) of this chapter.

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

(c) Paragraph (b) of this section and the provisions of §§ 502.28, 502.29 and 502.30 shall not apply, however, to any person who appears before the Commission on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee. [Rule 27.]

§ 502.28 Firms and corporations.

Practice before the Commission by firms or corporations on behalf of others shall not be permitted. [Rule 28.]

§ 502.29 Hearings.

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

§ 502.30 Suspension or disbarment.

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

§ 502.31 Statement of interest.

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

§ 502.32 Former employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Whenever the Commission has determined after appropriate review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice by:

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

(ii) Taking other appropriate disciplinary action.

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

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

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

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

Exhibit No. 1 to Subpart B [§§ 502.23, 502.26, 502.27]

Notice of Appearance

Federal Maritime Commission

Notice of Appearance

Docket No. ———:

Please enter my appearance in this proceeding as counsel for:

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

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

Outside Washington area: I authorize

☐ collect telephone call

☐ collect telegram

☐ I do not desire the above notice.

[Name]

[Address]

[Telephone No.]

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

Subpart C—Parties

§ 502.41 Parties; how designated.

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

§ 502.42 Hearing Counsel.

The Director, Bureau of Hearing Counsel, shall be a party to all proceedings governed by the rules in this part, except that in complaint proceedings under § 502.62, the Director may become a party only upon leave to intervene granted pursuant to § 502.72, and in rulemaking proceedings, the Director may become a party by designation, if the Commission determines that the circumstances of the proceeding warrant such participation. The Director or the Director's representative shall be designated as "Hearing Counsel" and shall be served with copies of all papers, pleadings, and documents in every proceeding in which Hearing Counsel is a party. Hearing Counsel 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.]

§ 502.43 Substitution of parties.

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

§ 502.44 Necessary and proper parties in certain complaint proceedings.

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

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

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

Subpart D—Rulemaking

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

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

§ 502.52 Notice of proposed rulemaking.

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

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

§ 502.53 Participation in rulemaking.

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

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

§ 502.54 Contents of rules.

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

§ 502.55 Effective date of rules.

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

Subpart E—Proceedings; Pleadings; Motions; Replies

§ 502.61 Proceedings.

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

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

expense, detriment to the public interest or undue prejudice to a party.

(c) In the order instituting a proceeding or in the notice of filing of complaint and assignment, the Commission shall establish dates by which the initial decision and the final Commission decision will be issued. These dates may be extended by order of the Commission for good cause shown. [Rule 61.]

§ 502.62 Complaints and fee.

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

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

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

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

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

(f) The complaint shall be accompanied by remittance of a $50 filing fee.

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

§ 502.63 Reparation, statute of limitations.

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

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

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

(d) Notification to the Commission that a complaint may or will be filed for the recovery of reparation will not constitute a filing within the applicable statutory period.

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

§ 502.64 Answer to complaint.

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

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

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

§ 502.65 Replies to answers not permitted.

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

§ 502.66 Order to show cause.

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

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

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

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

(2) No general rate increase or decrease shall take effect before the close of the sixtieth day after the day it is posted and filed with the Commission. A vessel operating common carrier (VOCC) shall file, under oath, concurrently with any general rate increase or decrease, testimony and exhibits of such composition, scope and format that they will serve as the VOCC's entire direct case in the event the matter is set for formal investigation, together with all underlying workpapers used in the preparation of the testimony and exhibits. The VOCC shall also certify that copies of testimony and exhibits and underlying workpapers have been filed simultaneously with the attorney general of every noncontiguous

State, Commonwealth, possession or Territory having ports in the relevant trade that are served by the VOCC. The contents of underlying workpapers served on attorneys general pursuant to this paragraph are to be considered confidential and are not to be disclosed to members of the public except to the extent specifically authorized by an order of the Commission or a presiding officer. A copy of the testimony and exhibits shall be made available at every port in the trade at the offices of the VOCC or its agent during usual business hours for inspection and copying by any person.

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

Certification

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

Signature:. ———

Date:. ———

Signed and Sworn to before me this ——— day of ———, 19—.

Notary Public:. ———

My Commission expires:. ———

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

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

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

(i) Identification of the tariff in question;

(ii) Grounds for opposition to the change;

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

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

(v) Any requests for additional carrier data;

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

(vii) A subscription and verification.

(2) Protests against other proposed changes in tariffs made pursuant to section 3 of the Intercoastal Shipping Act, 1933, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. The provision of paragraph (b)(1) of this section relating to the form, place and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against other proposed tariff changes. A protest is deemed filed on the date it is received by the Secretary of the Commission.

(c) Replies to protests shall conform to the requirements of § 502.74 [Rule 74.]

(d)(1) In the event the general rate increase or decrease of a VOCC is made subject to a docketed proceeding, Hearing Counsel, the VOCC and all protestants shall serve, under oath, testimony and exhibits constituting their direct case, together with underlying workpapers on all parties pursuant to Subpart H of this part and lodge copies of testimony and exhibits with the presiding officer no later than seven (7) days after the tariff matter takes effect or, in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(2) If other proposed tariff changes made pursuant to section 3 of the Intercoastal Shipping Act, 1933, are made subject to a docketed proceeding, the carrier, Hearing Counsel and all protestants will simultaneously serve pursuant to Subpart H of this part on all parties and lodge with the presiding officer prehearing statements as specified in paragraph (f)(1) of this section no later than seven (7) days after the tariff matter takes effect, or in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(e)(1) Subsequent to the exchange of prehearing statements by all parties, the presiding officer shall, at his or her discretion, direct all parties to attend a prehearing conference to consider:

(i) Simplification of issues;

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

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

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

(v) Requests for subpoenas; and

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

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

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

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

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

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

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

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

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

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

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

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

§ 502.68 Declaratory orders and fee.

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

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

(3) Petitions shall be accompanied by remittance of a $50 filing fee.

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

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

(d) Replies to the petition shall contain the complete factual and legal presentation of the replying party as to the desired resolution, or a detailed explanation why such can only be developed through discovery or evidentiary hearing. Replies shall conform to the requirements of § 502.74 and shall be served pursuant to Subpart H of this part.

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

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

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

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

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

§ 502.69 Petitions—general and fee.

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

(b) Petitions shall be accompanied by remittance of a $50 filing fee. [Rule 69.]

§ 502.70 Amendments or supplements to pleadings.

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

(b) A response to an amended pleading must be filed and served in conformity with the requirements of Subpart H of this part and § 502.74, unless the Commission or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading.

(c) Whenever by the rules in this part a pleading is required to be verified, the amendment or supplement shall also be verified. [Rule 70.]

§ 502.71 Bill of particulars.

Within fifteen (15) days after date of service of the complaint, respondent may file with the Commission and serve upon complainant pursuant to Subpart H of this part a motion for a bill of

particulars. Within ten (10) days after date of service of such motion, complainant shall file with the Commission and serve upon respondent either (a) the bill of particulars or (b) a reply to such motion, made in conformity with the requirements of § 502.74 setting forth the particular matters contained in the motion which are objected to and the reasons for the objections. If the motion is granted in whole or in part, the order granting same shall specify the date by which the particulars must be furnished. A motion may be filed relative to incomplete compliance with such order. In the event of inexcusable default in furnishing particulars, the party in default shall be precluded from making proof upon the issues with respect to which it has defaulted in furnishing particulars. The time for filing an answer to the complaint shall be extended to a date ten (10) days after the date of service of the bill of particulars or of notice of disallowance of the motion therefor. For good cause shown, motion for a bill of particulars also may be filed after answer is made and within a reasonable time prior to hearing. [Rule 71.]

§ 502.72 Petition for leave to intervene.

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

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

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

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

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

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

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

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

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

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

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

(d) Absent good cause shown, any intervenor desiring to utilize the procedures provided by Subpart L must commence doing so no later than fifteen (15) days after its petition for leave to intervene has been granted. If the petition is filed later than thirty (30) days after the date of publication in the **Federal Register** of the Commission's Order instituting the proceeding or notice of complaint filed, petitioner will be deemed to have waived its right to utilize such procedures, unless good cause is shown for the failure to file the petition within the 30-day period. The use of Subpart L procedures by an intervenor whose petition was filed beyond such 30-day period will in no event be allowed, if, in the opinion of the presiding officer, such use will result in delaying the proceeding unduly.

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

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

§502.73 Motions.

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

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

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

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

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

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

(a)(1) A reply to a reply is not permitted.

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

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

(c) Replies shall be in writing, shall be verified if verification of original pleading is required, shall be so drawn as to fully and completely advise the parties and the Commission as to the nature of the defense, shall admit or

deny specifically and in detail each material allegation of the pleading answered, shall state clearly and concisely the facts and matters of law relied upon, and shall conform to the requirements of Subpart H of this part. [Rule 74.]

§ 502.75 Proceedings involving assessment agreements.

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

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

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

Exhibit No. 1 to Subpart E [§ 502.62]—Complaint Form and Information Checklist

Before the Federal Maritime Commission

Complaint

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

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

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

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

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

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

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

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

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

———————————

[Complainant's signature]

———————————

[Office and post office address]

———————————

[Signature or agent or attorney of complainant]

———————————

[Post office address]

Verification [See § 502.112]

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

———————————

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

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

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

[Seal]

———————————

[Notary Public]

My Commission expires—. ————————

Information To Assist in Filing Formal Complaint

General

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

Under the Shipping Act of 1984 [foreign commerce], the complaint must be filed within three (3) years from the time the cause of action accrues and may be brought only against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

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

The format of Exhibit No. 1 to Subpart E must be followed and a *verification must be included* where the complainant is not represented by an attorney or other person qualified to practice before the Commission. [See §§ 502.21–502.32 and 502.112] The complaint must also fully describe the alleged violations of the specific section(s) of the shipping statute(s) involved and how complainant is or was directly injured as a result. An original and fifteen copies, plus a further number of copies sufficient for service upon each named respondent must be filed and the Commission will serve the other parties. [*See* §§ 502.113 and 502.118]

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

Checklist of Specific Information

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

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

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

3. Rate charged, with tariff authority for same, and any rule or regulation applicable

thereto; the charges collected and from whom.

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

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

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

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

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

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

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

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

Exhibit No. 2 to Subpart E [§ 502.64]—Answer to Complaint

Before the Federal Maritime Commission

Answer

———— v. ————

[Complainant] [Respondent]

Docket No. ————

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

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

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

[Name of respondent]

By ————

[Title of Officer]

[Office and post office address]

[Signature of attorney or agent]

[Post office address]

Date ————, 19—.

Verification

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

Certificate of Service

[See § 502.114.]

Exhibit No. 3 to Subpart E [§ 502.72]—Petition for Leave to Intervene

Before the Federal Maritime Commission

Petition for Leave To Intervene

———— v. ———— Docket No. ————.

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

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

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

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

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

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

[Petitioner's signature]

[Office and post office address]

[Signature of agent or attorney of petitioner]

[Post office address]

Verification and Certificate of Service

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

Subpart F—Settlement; Prehearing Procedure

§ 502.91 Opportunity for informal settlement.

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

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

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier by water in foreign commerce which publishes its own tariff or, if the common carrier does not publish its own tariff, the carrier and the conference to which it belongs, or a shipper, may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in a tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers.

(2) The Commission must have received an effective tariff setting forth the rate on which refund or waiver would be based prior to the filing of the application.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to Subpart H of this part. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

(ii) The application for refund or waiver must be accompanied by remittance of a $25 filing fee.

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

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

(i) If permission is granted by the Commission:

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

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

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

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

(5)(a) Application for refund or waiver shall be made in accordance with Exhibit 1 to this subpart. Any application which does not furnish the information required by the prescribed form or otherwise comply with this rule may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

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

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and three (3) copies to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Each application shall be acknowledged with a reference to the assigned docket number and referred to the Office of Administrative Law Judges. The presiding officer may, in his or her discretion, require the submission of additional information or oral testimony. Formal proceedings as described in other rules of this part need not be conducted. The presiding officer shall issue an initial decision to which the provisions of § 502.227 shall be applicable. [Rule 92.]

§ 502.93 Satisfaction of complaint.

If a respondent satisfies a complaint either before its answer thereto is due or after answering, a statement to that effect, setting forth when and how the complaint has been satisfied and signed and verified by the opposing parties shall be filed with the Commission and served upon all parties of record. Such a statement, which may be by letter, shall show the amount of reparation agreed upon; shall contain the data called for by Appendix A to this part (#4), insofar as said form is applicable; and shall state that a like adjustment has been or will be made by respondent with other persons similarly situated. Satisfied complaints will be dismissed in the discretion of the Commission. [Rule 93.]

§ 502.94 Prehearing conference.

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

(i) Simplification of the issues;

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

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

(iv) Limitation on the number of witnesses;

(v) The procedure at the hearing;

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

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

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

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

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

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

§ 502.95 Prehearing statements.

(a) Unless waiver is granted by the presiding officer, it shall be the duty of all parties to a proceeding to prepare a statement or statements at a time and in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

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

(1) Issues involved in the proceeding.

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

(3) Facts in dispute.

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

(5) A brief statement of applicable law.

(6) The conclusion to be drawn.

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

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

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

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

Exhibit No. 1 to Subpart F [§ 502.92]—Application for Refund of or Waiver for Freight Charges Due to Tariff Error

Federal Maritime Commission Special Docket No. ———

Amount of Freight Charges involved in request ———

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

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

(a) Commodity [According to tariff description].

(b) Number of shipments.

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

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

(e) Shipper and Place of Origin.

(f) Consignee, Place of Destination and Routing of Shipment(s).

(g) Name of Carrier and Date shown on Bill of Lading [furnish legible copies of bill(s) of lading].

(h) Names of Participating Ocean Carrier(s).

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

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

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

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

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

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

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

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

4. State whether there are shipments of other shippers of the same or similar commodity which (i) moved via the carrier(s) or conference involved in this application during the period of time beginning on the day the bill(s) of lading was issued and ending on the day before the effective date of the conforming tariff, and (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in Number 1, above.

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

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

State of ———, County of ———, ss:

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

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

(Seal)

———

Notary Public

My Commission expires ———. ———

Affidavit of Carrier(s) and/or Conference

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

Certificate of Mailing

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

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

[Signature] ———. ———

For ———. ———

Subpart G—Time

§ 502.101 Computation.

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

§ 502.102 Enlargement of time to file documents.

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

§ 502.103 Reduction of time to file documents.

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

§ 502.104 Postponement of hearing.

Motions for postponement of any hearing date shall set forth the reasons for the motion, and shall conform to the requirements of Subpart H of this part, except as to service if they show that parties have received such actual notice of motion. Such motions will be granted only if found necessary to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party. Replies to such motions shall conform to the requirements of § 502.74. [Rule 104.]

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

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

Subpart H—Form, Execution, and Service of Documents

§ 502.111 Form and appearance of documents filed with Commission.

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

§ 502.112 Subscription and verification of documents.

(a) If a party is represented by an attorney or other person qualified to practice before the Commission under the rules in this part, each pleading, document or other paper of such party filed with the Commission shall be signed by at least one person of record

admitted to practice before the Commission in his or her individual name, whose address shall be stated. Except when otherwise specifically provided by rule or statute, such pleading, document or paper need not be verified or accompanied by affidavit. The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by him or her that he or she has read the pleading, document or paper; that he or she is authorized to file it; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. For a willful violation of this section, a person admitted or qualified to practice before the Commission may be subjected to appropriate disciplinary action.

(b) If a party is not represented by a person admitted or qualified to practice before the Commission, each pleading, document or other paper of such party filed with the Commission shall be signed and verified under oath by the party or by a duly authorized officer or agent of the party, whose address and title shall be stated. The form of verification shall be substantially as set forth in Appendix No. 1 to Subpart E. Where the signature is that of an officer or agent (unless, in the case of a corporate party, it is signed by the president or a vice president and attested by the secretary or an assistant secretary under the seal of the corporation), there shall be filed with the Commission an original or certified copy of the power of attorney or other document authorizing the person to sign. [Rule 112.]

§ 502.113 Service by the Commission.

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

§ 502.114 Service and filing by parties.

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

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

§ 502.115 Service on attorney or other representative.

When a party has appeared by attorney or other representative, service upon each attorney or other representative of record will be deemed service upon the party, except that, if two or more attorneys of record are partners or associates of the same firm, only one of them need be served. [Rule 115.]

§ 502.116 Date of service.

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

§ 502.117 Certificate of service.

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

Certificate of Service

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

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

(Signature) _____

(For) _____

[Rule 117.]

§ 502.118 Copies of documents for use of the Commission.

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

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

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

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

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

(iii) Briefs submitted pursuant to § 502.221;

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule.

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

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

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

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

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

Subpart I—Subpenas

§ 502.131 Requests; issuance.

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

§ 502.132 Motions to quash or modify.

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

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

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

§ 502.133 Attendance and mileage fees.

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

§ 502.134 Service of subpenas.

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

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

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

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

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

§ 502.136 Enforcement.

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

Subpart J—Hearings; Presiding Officers, Evidence

§ 502.141 Hearings not required by statute.

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

§ 502.142 Hearings required by statute.

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

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

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

§ 502.144 Notice of time and place of hearing.

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

or their representatives. Notice may be served by mail or telegraph. [Rule 144.]

§ 502.145 Presiding officer.

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

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

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

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

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

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

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

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

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

§ 502.147 Functions and powers.

(a) *Of presiding officer.* The officer designated to hear a case shall have authority to arrange and give notice of hearing; sign and issue subpenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order, except with regard to that portion of any order involving the Commission's suspension authority set forth in Section 3, Intercoastal Shipping Act, 1933; hold conferences for the settlement or simplification of issues by consent of the parties; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions, administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof and receive relevant material, reliable and probative evidence; act upon petitions to intervene; permit submission of facts, arguments, offers of settlement, and proposals of adjustment; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge's decision thereon, except as otherwise provided by the rules in this part, act upon petitions for enlargement of time to file such documents, including answers to formal complaints; and dispose of any other matter that normally and properly arises in the course of proceedings. The presiding office or the Commission may exclude any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

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

§ 502.148 Consolidation of proceedings.

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

§ 502.149 Disqualification of presiding or participating officer.

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

§ 502.150 Further evidence required by presiding officer during hearing.

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

§ 502.151 Exceptions to rulings of presiding officer unnecessary.

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

§ 502.152 Offer of proof.

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

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

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

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

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

(d) Unless otherwise provided, the certification of the appeal shall not

operate as a stay of the proceeding before the presiding officer.

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

§ 502.154 Rights of parties as to presentation of evidence.

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

§ 502.155 Burden of proof.

At any hearing in a suspension proceeding under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.67), the burden of proof to show that the suspended rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order. [Rule 155.]

§ 502.156 Evidence admissible.

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

§ 502.157 Written evidence.

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

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

§ 502.158 Documents containing matter not material.

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced, unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant. [Rule 158.]

§ 502.159 [Reserved]

§ 502.160 Records in other proceedings.

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

§ 502.161 Commission's files.

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

§ 502.162 Stipulations.

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

§ 502.163 Receipt of documents after hearing.

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

§ 502.164 Oral argument at hearings.

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

§ 502.165 Official transcript.

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

(b)(1) Section 11 of the Federal Advisory Committee Act provides that, except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and

advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings. As used in this section, "agency proceeding" means any proceeding as defined in 5 U.S.C. 551(12).

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

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

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

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

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

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

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

§ 502.166 Corrections of transcript.

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

§ 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the presiding officer may in his or her discretion order that the witness shall disclose such information only in the presence of those designated and sworn to secrecy by the presiding officer. The transcript of testimony shall be held confidential. Within five (5) days after such testimony is given, the objecting party shall file with the presiding officer a verified written motion to withhold such information from public disclosure, setting forth sufficient identification of same and the basis upon which public disclosure should not be made. Copies of said transcript and motion need be served only upon the parties to whose representatives the information has been disclosed and upon such other parties as the presiding officer may designate. This rule is subject to the proviso that any information given pursuant thereto, may be used by the presiding officer or the Commission if they deem it necessary to a correct decision in the proceeding. [Rule 167.]

§ 502.168 Copies of data or evidence.

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

§ 502.169 Record of decision.

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

Subpart K—Shortened Procedure

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

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

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

A complaint filed with the Commission under this subpart shall have attached a memorandum of the facts, subscribed and verified according to § 502.112, and of arguments separately stated, upon which it relies. The original of each complaint with memorandum shall be accompanied by copies for the Commission's use. The complaint shall be accompanied by remittance of a $50 filing fee. [Rule 182.]

§ 502.183 Respondent's answering memorandum.

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

§ 502.184 Complainant's memorandum in reply.

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

submission of additional evidentiary materials. [Rule 184.]

§ 502.185 Service of memoranda upon and by interveners.

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

§ 502.186 Contents of memoranda.

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

§ 502.187 Procedure after filing of memoranda.

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

Subpart L—Depositions, Written Interrogatories, and Discovery

§ 502.201 General provisions governing discovery.

(a) *Applicability.* The procedures described in this subpart are available in all adjudicatory proceedings under section 22 of the Shipping Act, 1916 and the Shipping Act of 1984. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

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

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

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

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

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

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

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

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

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

(i) *Protective Orders.*

(1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding office may make any order which justice requires to protect a party or person from annoyance, embarrasment, oppression, or undue burden or expense including one or more of the following: (i) That the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery may be conducted with no one present except persons designated by the presiding officer; (vi) that a deposition after being sealed be opended only by order of the presiding officer; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties

simultaneously file specified documents or information enclosed in sealed enveloped to be opened as directed by the presiding officer.

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

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

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

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

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

§ 502.202 Persons before whom depositions may be taken.

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

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

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

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

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

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to such person and to every other party to the action, pursuant to subpart H of this part. The notice shall state the time and place for the taking of the deposition sufficient to identify the person or the particular class or group to which the person belongs. The notice shall also contain a statement of the matters concerning which each witness will testify.

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

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

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

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

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

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

(c) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in paragraph (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objection party of deponent, the taking of the deposition shall be suspended for

the time necessary to make a motion for an order. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

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

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

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

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

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

§ 502.204 Depositions upon written interrogatories.

(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party pursuant to subpart H of this part with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross interrogatorie upon the party proposing to take the deposition. All errors and irregularities in the notice are waived unless written objection is promptly served upon the party giving the notice.

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

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

§ 502.205 Interrogatories to parties.

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

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

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

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

(c) *Scope, time, number and use.* (1) Interrogatories may relate to any matters which can be inquired into under § 502.210(h), and the answers may be used to the same extent as provided in § 502.209 for the use of the deposition of a party.

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

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

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

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. [Rule 205.]

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

(a) *Scope.* Any party may serve, pursuant to Subpart H of this part, on any other party a request (1) to produce

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

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

§ 502.207 Requests for admission.

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

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

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

(iii) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; a party may, subject to the provisions of § 502.207(c) deny the matter or set forth reasons why it cannot be admitted or denied.

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

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

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under paragraph (a) of this section, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. Such application must be made to the presiding officer before issuance of the initial decision in the proceeding. The presiding officer shall make the order unless it is found that (1) the request was held objectionable pursuant to paragraph (a) of this section, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that it might prevail on the matter, or (4) there was other good reason for the failure to admit. [Rule 207.]

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

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

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

(c) Rulings of the presiding officer issued under paragraph (a) of this

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

§ 502.209 Use of depositions at hearings.

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

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

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

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States unless it appears that the absence of the witness was procured by the party offering the depositions; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart M—Briefs; Requests for Findings; Decisions; Exceptions

§ 502.221 Briefs; requests for findings.

(a) The presiding officer shall fix the time and manner of filing briefs and any enlargement of time. The period of time allowed shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise.

(b) Briefs shall be served upon all parties pursuant to Subpart H of this part.

(c) In investigations instituted on the Commission's own motion, the presiding officer may require Hearing Counsel to file a request for findings of fact and conclusions within a reasonable time prior to the filing of briefs. Service of the request shall be in accordance with the provisions of Subpart H of this part.

(d) Unless otherwise ordered by the presiding officer, opening or initial briefs shall contain the following matters in separately captioned sections: (1) Introductory section describing the nature and background of the case, (2) proposed findings of fact in serially numbered paragraphs with reference to exhibit numbers and pages of the transcript, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

(e) All briefs shall contain a subject index or table of contents with page references and a list of authorities cited.

(f) The presiding officer may limit the number of pages to be contained in a brief. [Rule 221.]

§ 502.222 Requests for enlargement of time for filing briefs.

Requests for enlargement of time within which to file briefs shall conform to the requirements of § 502.102. Except for good cause shown, such requests shall be filed and served pursuant to Subpart H of this part not later than five (5) days before the expiration of the time fixed for the filing of the briefs. [Rule 222.]

§ 502.223 Decisions—administrative law judges.

To the administrative law judges is delegated the authority to make and serve initial or recommended decisions. [Rule 223.]

§ 502.224 Separation of functions.

The separation of functions as required by 5 U.S.C. 554(d) shall be observed in proceedings under Subparts A to Q inclusive, of this part. [Rule 224.]

§ 502.225 Decisions—contents and service.

All initial, recommended, and final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding. In proceedings involving overcharge claims, the presiding officer may, where appropriate, require that the carrier publish notice in its tariff of the substance of the decision. This provision shall also apply to decisions issued pursuant to Subpart T of this part. [Rule 225.]

§ 502.226 Decision based on official notice, public documents.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body, provided, that where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(b) Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a state or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or relevant part thereof. [Rule 226.]

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

(a)(1) Within twenty-two (22) days after date of service of the initial decision, unless a shorter period is fixed under § 502.103, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate transcript page and exhibit number when referring to the record, and shall be served on all parties pursuant to Subpart H of this part.

(2) Any adverse party may file and serve a reply to such exceptions within twenty-two (22) days after the date of service thereof, which shall contain appropriate transcript and exhibit references.

(3) Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, such decision shall become the decision of the Commission thirty (30) days after date of service thereof (and the Secretary shall so notify the parties), unless within such 30-day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed or a determination to review is made by the Commission on its own initiative.

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

(5) Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Commission shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties.

(6) The time periods for filing exceptions and replies to exceptions, prescribed by this section, shall not apply to proceedings conducted under §§ 502.67 and 502.75.

(b) (1) If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than twenty-two (22) days after service of the ruling on the motion in question.

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within fifteen (15) days after the date the appeal is served.

(3) The denial of a petition to intervene or withdrawal of a grant of intervention shall be deemed to be a dismissal within the meaning of this paragraph.

(c) Whenever an administrative law judge orders dismissal of a proceeding in whole or in part, such order, in the absence of appeal, shall become the order of the Commission thirty (30) days after date of service of such order (and the Secretary shall so notify the parties), unless within such 30-day period the Commission decides to review such

order on its own motion, in which case notice of such intention shall be served upon the parties.

(d) The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 227.]

§ 502.228 Request for enlargement of time for filing exceptions and replies thereto.

Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of § 502.102. Requests for extensions of these periods will be granted only under exceptional circumstances duly demonstrated in the request. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of such documents. Any enlargement of time granted will automatically extend by the same period the date for the filing of notice or review by the Commission. [Rule 228.]

§ 502.229 Certification of record by presiding or other officer.

The presiding or other officer shall certify and transmit the entire record to the Commission when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Commission that the initial decision will be reviewed on its own initiative, or (c) the Commission requires the case to be certified to it for initial decision. [Rule 229.]

§ 502.230 Reopening by presiding officer of Commission.

(a) *Motion to reopen.* At any time after the conclusion of a hearing in a proceeding, but before issuance by the presiding officer of a recommended or initial decision, any party to the proceeding may file with the presiding officer a motion to reopen the proceeding for the purpose of receiving additional evidence. A motion to reopen shall be served in conformity with the requirements of Subpart H and shall set forth the grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Reply.* Within ten (10) days following service of a motion to reopen, any party may reply to such motion.

(c) *Reopening by presiding officer.* At any time prior to filing his or her decision, the presiding officer upon his or her own motion may reopen a proceeding for the reception of further evidence.

(d) *Reopening by the Commission.* Where a decision has been issued by the presiding officer or where a decision by the presiding officer has been omitted, but before issuance of a Commission decision, the Commission may, after petition and reply in conformity with paragraphs (a) and (b) of this section, or upon its own motion, reopen a proceeding for the purpose of taking further evidence.

(e) *Remand by the Commission.* Nothing contained in this rule shall preclude the Commission from remanding a proceeding to the presiding officer for the taking of additional evidence or determining points of law. [Rule 230.]

Subpart N—Oral Argument; Submission for Final Decision

§ 502.241 Oral argument.

(a) If oral argument before the Commission is desired on exceptions to an initial or recommended decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such request irrespective of its filing exceptions under § 502.227. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition or application, or in the reply thereto.

(b) Applications for oral argument will be granted or denied in the discretion of the Commission, and, if granted, the notice of oral argument will set forth the order of presentation. Upon request, the Commission will notify any party of the amount of time which will be allowed it.

(c) Those who appear before the Commission for oral argument shall confine their argument to points of controlling importance raised on exceptions or replies thereto. Where the facts of a case are adequately and accurately dealt with in the initial or recommended decision, parties should, as far as possible, address themselves in argument to the conclusions.

(d) Effort should be made by parties taking the same position to agree in advance of the argument upon those persons who are to present their side of the case, and the names of such persons and the amount of time requested should be received by the Commission not later than ten (10) days before the date set for the argument. The fewer the number of persons making the argument the more effectively can the parties' interests be presented in the time allotted. [Rule 241.]

§ 502.242 Submission to Commission for final decision.

A proceeding will be deemed submitted to the Commission for final decision as follows: (a) If oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions; (c) in the case of an initial decision, the date of notice of the Commission's intention to review the decision, if such notice is given. [Rule 242.]

§ 502.243 Participation of absent Commissioner.

Any Commissioner who is not present at oral argument and who is otherwise authorized to participate in a decision shall participate in making that decision after reading the transcript of oral argument unless he or she files in writing an election not to participate. [Rule 243.]

Subpart O—Reparation

§ 502.251 Proof on award of reparation.

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought (See § 502.63), the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts. [Rule 251.]

§ 502.252 Reparation statements.

When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Exhibit No. 1 to

this subpart, showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Commission. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the respondent or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Commission for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Commission, or in its discretion referred for further hearing. [Rule 252.]

§ 502.253 Interest and attorney's fees in reparation proceedings.

(a) Except as to applications for refund or waiver of freight charges under § 502.92 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest will be granted on awards of reparation in cases involving the misrating of cargo and arising under section 10(b) of the Shipping Act of 1984 and section 2 of the Intercoastal Shipping Act, 1933. Interest awarded in reparation proceedings will accrue from the date of injury to the date specified in the Commission order awarding reparations. 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. The rate of interest will be derived from the average monthly rates 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 Treasury bill rate at the date of the Commission Order awarding reparations. Compounding will be daily from the date of injury to the date specified in the Commission Order awarding reparations. The monthly rates on six-month U.S. Treasury bills for the reparation period will be summed and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period.

(b) The Commission shall also award reasonable attorney's fees in reparation proceedings. [Rule 253.]

Exhibit No. 1 to Subpart O [§ 502.252]—Reparation Statement To Be Filed Pursuant to Rule 252

Claim of _____ under the decision of the Federal Maritime Commission in Docket No. _____.

Date of B/L	Date of delivery or tender of delivery	Date charges paid	Vessel	Voyage No.	Port of origin	Destination port	Route	Commodity	Weight or measurement	As charged		Should be		Reparation	Charges paid by*
										Rate	Amount	Rate	Amount		

*Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

Total amount of reparation $_____.

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _____.

_____ Steamship Company, Collecting Carrier Respondent,

by _____, Auditor

By _____, *Claimant*

_____, *Attorney*

(address and date)

Subpart P—Reconsideration of Proceedings

§ 502.261 Petitions for reconsideration and stay.

(a) Within thirty (30) days after issuance of a final decision or order by the Commission, any party may file a petition for reconsideration. Such petition shall be served in conformity with the requirements of Subpart H of this part. A petition will be subject to summary rejection unless it:

(1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;

(2) Identifies a substantive error in material fact contained in the decision or order; or

(3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. A petition shall be verified if verification of the original pleading is required and shall not operate as a stay of any rule or order of the Commission.

(b) A petition for stay of a Commission order which directs the discontinuance of statutory violations will not be received.

(c) The provisions of this section are not applicable to decisions issued pursuant to Subpart S of this part. [Rule 261.]

§ 502.262 Reply.

Any party may file a reply to a petition for reconsideration within fifteen (15) days after the date of service of the petition in accordance with § 502.74. The reply shall be served in conformity with Subpart H. [Rule 262.]

Subpart Q—Schedules and Forms

§ 502.271 Schedule of information for presentation in regulatory cases.

The following approved forms and illustrative wording for use in Commission proceedings appear in this part as follows:

(a) *Notice of Appearance.* Exhibit No. 1 to Subpart B [following § 502.32].

(b) *Certification.* Certification of non-disclosure by persons requesting underlying data from carriers filing general rate increase or decrease § 502.67(a)(3)].

(c) *Complaint.* Exhibit No. 1 to Subpart E [following § 502.75].

(d) *Verification.* See complaint form in Exhibit No. 1 to Subpart E [following § 502.75].

(e) *Answer to Complaint.* Exhibit No. 2 to Subpart E [following § 502.75].

(f) *Petition for Leave to Intevene.* Exhibit No. 3 to Subpart E [following § 502.75].

(g) *Special Docket Application.* Exhibit No. 1 to Subpart F [following § 502.95].

(h) *Certificate of Service.* § 502.117 [Subpart H]. See also § 502.320 for small claims.

(i) *Reparation Statement.* Where the Commission finds reparation is due but

that the amount cannot be ascertained: Exhibit No. 1 to Subpart O [following § 502.253].

(j) *Small Claim Form for Informal Adjudication.* Exhibit No. 1 to Subpart S [following § 502.305].

(k) *Respondent's Consent Form for Informal Adjudication.* Exhibit No. 2 to Subpart S [following § 502.305]. [Rule 271.]

Subpart R—Nonadjudicatory Investigations

§ 502.281 Investigational policy.

The Commission has extensive regulatory duties under the various acts it is charged with administering. The conduct of investigations is essential to the proper exercise of the Commission's regulatory duties. It is the purpose of this subpart to establish procedures for the conduct of such investigations which will insure protection of the public interest in the proper and effective administration of the law. The Commission encourages voluntary cooperation in its investigations where such can be effected without delay or without prejudice to the public interest. The Commission may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law. [Rule 281.]

§ 502.282 Initiation of investigations.

Commission inquiries and nonadjudicatory investigations are originated by the Commission upon its own motion when in its discretion the Commission determines that information is required for the purposes of rulemaking or is necessary or helpful in the determination of its policies or the carrying out of its duties, including whether to institute formal proceedings directed toward determining whether any of the laws which the Commission administers have been violated. [Rule 282.]

§ 502.283 Order of investigation.

When the Commission has determined that an investigation is necessary, an Order of Investigation shall be issued. [Rule 283.]

§ 502.284 By whom conducted.

Investigations are conducted by Commission representatives designated and duly authorized for the purpose. (See § 502.25.) Such representatives are authorized to exercise the duties of their office in accordance with the laws of the United States and the regulations of the Commission, including the resort to all compulsory processes authorized by law, and the administration of oaths and affirmances in any matters under investigation by the Commission. [Rule 284.]

§ 502.285 Investigational hearings.

(a) Investigational hearings, as distinguished from hearings in adjudicatory proceedings, may be conducted in the course of any investigation undertaken by the Commission, including inquiries initiated for the purpose of determining whether or not a person is complying with an order of the Commission.

(b) Investigational hearings may be held before the Commission, one or more of its members, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be stenographically reported and a transcript thereof shall be made a part of the record of investigation. [Rule 285.]

§ 502.286 Compulsory process.

The Commission, or its designated representative may issue orders or subpenas directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Such orders and subpenas shall be served in the manner provided in § 502.134. [Rule 286.]

§ 502.287 Depositions.

The Commission, or its duly authorized representative, may order testimony to be taken by deposition in any investigation at any stage of such investigation. Such depositions may be taken before any person designated by the Commission having the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his or her direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence as provided in § 502.131. [Rule 287.]

§ 502.288 Reports.

The Commission may issue an order requiring a person to file a report or answers in writing to specific questions relating to any matter under investigation. [Rule 288.]

§ 502.289 Noncompliance with investigational process.

In case of failure to comply with Commission investigational processes, appropriate action may be initiated by the Commission, including actions for enforcement by the Commission or the Attorney General and forfeiture of penalties or criminal actions by the Attorney General. [Rule 289.]

§ 502.290 Rights of witness.

Any person required to testify or to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the depositions, as reduced to writing by or under the direction of the person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter or right, otherwise participate in the investigation. [Rule 290.]

§ 502.291 Nonpublic proceedings.

Unless otherwise ordered by the Commission, all investigatory proceedings shall be nonpublic. [Rule 291.]

Subpart S—Informal Procedure for Adjudication of Small Claims

§ 502.301 Statement of Policy.

(a) Section 11(a) of the Shipping Act of 1984 permits any person to file a complaint with the Commission claiming a violation occurring in connection with the foreign commerce of the United States and to seek reparation for any injury caused by that violation.

(b) Section 22 of the Shipping Act, 1916, permits any person to file a complaint against any common carrier by water in interstate and offshore domestic commerce or against any other person subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, claiming a violation of those statutes and to seek reparation for that violation.

(c) With the consent of both parties, claims filed under this subpart in the amount of $10,000 or less will be referred to the Commission's Informal Dockets Activity for adjudication and decision by its Settlement Officers without the necessity of formal proceedings under the rules of this part.

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

§ 502.302 Limitations of Actions.

(a) Claims alleging violations of the Shipping Act of 1984 must be filed within three years from the time the cause of action accrues.

(b) Claims alleging violations of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, must be filed within two years from the time the cause of action arises.

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

§ 502.303 [Reserved]

§ 502.304 Procedure and filing fee.

(a) A sworn claim under this subpart shall be filed in the form prescribed in Exhibit No. 1 to this subpart. Three (3) copies of this claim must be filed, together with the same number of copies of such supporting documents as may be deemed necessary to establish the claim. Copies of tariff pages need not be filed; reference to such tariffs or to pertinent parts thereof will be sufficient. Supporting documents may consist of affidavits, correspondence, bills of lading, paid freight bills, export declarations, dock or wharf receipts, or of such other documents as, in the judgment of the claimant, tend to establish the claim. The Settlement Officer may, if deemed necessary, request additional documents or information from claimants. Claimant may attach a memorandum, brief or other document containing discussion, argument, or legal authority in support of its claim. If a claim filed under this subpart involves any shipment which has been the subject of a previous claim filed with the Commission, formally or informally, full reference to such previous claim must be given.

(b) Claims under this subpart shall be addressed to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such claims shall be accompanied by remittance of a $25 filing fee.

(c) Each claim under this subpart will be acknowledged with a reference to the Informal Docket Number assigned. The number shall consist of a numeral(s) followed by capital "I" in parentheses. All further correspondence pertaining to such claims must refer to the assigned Informal Docket Number. If the documents filed fail to establish a claim for which relief may be granted, the parties affected will be so notified in writing. The claimant may thereafter, but only if the period of limitation has not run, resubmit its claim with such additional proof as may be necessary to establish the claim. In the event a complaint has been amended because it failed to state a claim upon which relief may be granted, it will be considered as a new complaint.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Settlement Officer on the respondent involved.

(e) Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate refusal or consent in its response will be conclusively deemed to indicate such consent. The response shall consist of documents, arguments, legal authorities, or precedents, or any other matters considered by the respondent to be a defense to the claim. The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.

(f) If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under § 502.311 and will be adjudicated under Subpart T of this part.

(g) Both parties shall promptly be served with the Settlement Officer's decision which shall state the basis upon which the decision was made. Where appropriate, the Settlement Officer may require that the respondent publish notice in its tariff of the substance of the decision. This decison shall be final, unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(h) Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in paragraph (g) of this section will recommence. [Rule 304.]

§ 502.305 Applicability of other rules of this part.

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

Exhibit No. 1 to Subpart S [§ 502.304(a)]—Small Claim Form for Informal Adjudication and Information Checklist

Federal Maritime Commission, Washington, D.C.

Informal Docket No.———

(Claimant)

vs.

(Respondent)

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

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

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in Subpart S (46 CFR 502.301–502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

_____

(Date)

_____

(Claimant's signature)

_____

(Claimant's address)

_____

(Signature of agent or attorney)

_____

(Agent's or attorney's address)

Verification

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

_____

The claimant [or if a firm, association, or corporation, state the capacity of the affiant] and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

_____

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

_____

(Notary Public)

My Commission expires, _____

Information To Assist in Filing Informal Complaints

Informal Docket procedures are limited to claims of $10,000 or less and are appropriate only in instances when an evidentiary hearing on disputed facts is not necessary. Where, however, a respondent elects not to consent to the informal procedures [See Exhibit No. 2 to Subchapter S], the claim will be adjudicated by an administrative law judge under Subpart T of Part 502.

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

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

If the claim is for "damages" as defined in § 502.303, a violation of a specific section of a particular shipping statute must be alleged.

The format of Exhibit No. 1 must be followed and a *verification must be included* where the claimant is not represented by an attorney or other person qualified to practice before the Commission. [See §§ 502.21–502.32 and § 502.112.] An original and two (2) copies of the claim *and all attachments*, including a brief in support of the claim, must be submitted.

Exhibit No. 2 to Subpart S [§ 502.304(e)]—Respondent's Consent Form for Informal Adjudication

Federal Maritime Commission, Washington, D.C.

Informal Docket No. ———

Respondent's Affidavit

I authorize the Settlement Officer to determine the above-numbered claim in accordance with Subpart S (46 CFR 502) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission Review.

(Date) _____

(Signed) _____

(Capacity) _____

Verification

State of ———, County of ———, ss: ———, being first duly sworn on oath deposes and says that he or she is ———, (Title or Position) and is the person who signed the foregoing and agrees without qualification to its truth.

_____

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

_____

(Notary Public)

My Commission expires _____.

Certificate of Service [See § 502.320]

Subpart T—Formal Procedure for Adjudication of Small Claims

§ 502.311 Applicability.

In the event the respondent elects not to consent to determination of the claim under Subpart S of this part, it shall be adjudicated by the administrative law judges of the Commission under procedures set forth in this subpart, if timely filed under § 502.302. The previously assigned Docket Number shall be used except that it shall now be followed by capital "F" instead of "I" in parentheses (See § 502.304(c)). The complaint shall consist of the documents submitted by the claimant under Subpart S of this part. [Rule 311.]

§ 502.312 Answer to complaint.

The respondent shall file with the Commission an answer within twenty-five (25) days of service of the complaint and shall serve a copy of said answer upon complaint. The answer shall admit or deny each matter set forth in the complaint. Matters not specifically denied will be deemed admitted. Where matters are urged in defense, the answer shall be accompanied by appropriate affidavits, other documents, and memoranda. [Rule 312.]

§ 502.313 Reply of complainant.

Complainant may, within twenty (20) days of service of the answer filed by respondent, file with the Commission and serve upon the respondent a reply memorandum accompanied by appropriate affidavits and supporting documents. [Rule 313.]

§ 502.314 Additional information.

The administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent. [Rule 314.]

§ 502.315 Request for oral hearing.

In the usual course of disposition of complainants filed under this subpart, no oral hearing will be held, but, the administrative law judge, in his or her discretion, may order such hearing. A request for oral hearing may be incorporated in the answer or in complaint's reply to the answer. Requests for oral hearing will not be entertained unless they set forth in detail the reasons why the filing of affidavits or other documents will not permit the fair and expeditious disposition of the claim, and the precise nature of the facts sought to be proved at such oral hearing. The administrative law judge shall rule upon a request for oral hearing within (10) days of its receipt. In the event an oral hearing is ordered, it will be held in accordance with the rules applicable to other formal proceedings, as set forth in Subparts A through Q of this part. [Rule 315.]

§ 502.316 Intervention.

Intervention will ordinarily not be permitted. [Rule 316.]

§ 502.317 Oral argument.

No oral argument will be held, unless otherwise directed by the administrative law judge. [Rule 317.]

§ 502.318 Decision.

The decision of the administrative law judge shall be final, unless, within twenty-two (22) days from the date of service of the decision, either party

requests review of the decision by the Commission, asserting as grounds therefor that a material finding of fact or a necessary legal conclusion is erroneous or that prejudicial error has occurred, or unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 318.]

§ 502.319 Date of service and computation of time.

The date of service of documents served by the Commission shall be that which is shown in the service stamp thereon. The date of service of documents served by parties shall be the date when the matter served is mailed or delivered in person, as the case may be. When the period of time prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation. [Rule 319.]

§ 502.320 Service.

All claims, resubmitted claims, petitions to intervene and rulings thereon, notices of oral hearings, notices of oral arguments (if necessary), decisions of the administrative law judge, notices of review, and Commission decisions shall be served by the administrative law judge or the Commission. All other pleadings, documents and filings shall, when tendered to the Commission, evidence service upon all parties to the proceeding. Such certificate shall be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by [mailing, delivering to courier, or delivering in person], a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

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

(Signature) ———————————

(For) ———————————

[Rule 320.]

§ 502.321 Applicability of other rules of this part.

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

Subpart U—Conciliation Service

§ 502.401 Definitions.

For purposes of this subpart:

(a) *"Disputes"* means disagreements between two or more parties arising from the transportation of goods or the performance of services in connection with such transportation in the domestic offshore commerce or the foreign commerce of the United States; a difference of opinion regarding the interpretation of any tariff, rate, rule, or regulation; a disagreement regarding the performance of any service in connection with such transportation; a disagreement with respect to an alleged violation of the shipping statutes; and other disagreement or opposing opinion regarding any matter connected with transportation of cargoes in the waterborne commerce of the United States. This definition is limited to those disputes which fall within the jurisdiction of the Federal Maritime Commission.

(b) *"Shipping statutes"* means the Shipping Act of 1984, 46 U.S.C. app. 1701–1720; Shipping Act, 1916, 46 U.S.C. app. 801 et seq.; Merchant Marine Act, 1936, 46 U.S.C. app. 1101 et seq.; Merchant Marine Act, 1920, 46 U.S.C. app. 861 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 et seq.; and amendments of and Acts relating to the foregoing, to the extent of the Federal Maritime Commission's jurisdiction under such Acts.

(c) *"Advisory opinions"* means non-binding conclusions reached by a conciliator on the basis of oral presentation and/or documentary authority.

(d) *"Domestic offshore commerce"* means waterborne common carriage between:

(1) The Continental United States and Alaska or Hawaii;

(2) Alaska and Hawaii;

(3) The United States or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(4) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession or district; and

(5) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia); and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(e) *"Foreign commerce"* means waterborne common carriage between the United States or any of its territories, commonwealths, districts or possessions, and a foreign country. [Rule 401.]

§ 502.402 Policy.

It is the policy of the Federal Maritime Commission:

(a) To offer its good offices and expertise to parties to disputes involving matters within its jurisdiction, so as to permit resolution of such disputes with dispatch and without the necessity of costly and time-consuming formal proceedings;

(b) To facilitate and promote the resolution of problems and disputes by encouraging affected parties to resolve differences through their own resources;

(c) To create a forum in which grievances, interpretations, problems, and questions involving the waterborne commerce of the United States may be aired, discussed and, hopefully, resolved to the mutual advantage of all concerned parties. [Rule 402.]

§ 502.403 Persons eligible for service.

Request for conciliation service may be made by any shipper, shippers' association, merchant, carrier, conference of carriers, freight forwarder, marine terminal operator, Government agency, or any other person affected by or involved in the transportation of goods by common carrier in the waterborne domestic offshore or foreign commerce of the United States. [Rule 403.]

§ 502.404 Procedure and fee.

(a) The request for conciliation should be addressed to the Federal Maritime Commission Conciliation Service, Washington, D.C. 20573, and should contain the details of the dispute, names and addresses of all involved parties, the contentions of each party or parties, and copies of any documents that are relevant to the disposition of the issues. If the request is made by any one party to the dispute, the party requesting conciliation should mail or deliver to the other party or parties to the dispute a copy of the letter of request, with attachments, if any. The request shall be accompanied by remittance of a $25 service fee.

(b) Each matter will be assigned a number prefixed by the letters FMCCS and assigned to a conciliator for disposition and the involved parties will be informed of the case number and the name of the conciliator.

(c) While it is preferable that all parties involved in a dispute request a

service jointly, a request by a single party for the service will be acted upon, provided all parties agree that the dispute should be conciliated. In the event that the request is made by only one party, the conciliator will contact the other party or parties to the dispute and be advised as to whether such parties agree to participate in the conciliation. If the other party or parties to the dispute do not agree to the Conciliation Service, no further action will be taken by the conciliator and the conciliation ceases.

(d) The parties will be free to determine the best procedures to be used with the qualification that the conciliator may disapprove procedures that would in his or her opinion be either too time-consuming or involve inordinate expense to the Federal Maritime Commission. The parties may agree to (1) fix a time and place for the oral presentation of each party's contention; and (2) request affidavits, documents, or other materials that could help resolve the dispute. The conciliator will be in a strictly advisory capacity. There will be no written record of the conciliation discussions.

(e) Participation in the conciliation of a dispute is purely voluntary at all stages and the parties involved may withdraw at any time without prejudice. [Rule 404.]

§ 502.405 Assignment of conciliator.

The Secretary of the Commission, giving due regard to the type and complexity of the problem presented and the degree of expertise required, will assign a conciliator to each dispute. [Rule 405.]

§ 502.406 Advisory opinion.

(a) The conciliator will write an advisory opinion that must meet the approval of all parties. If the advisory opinion, or revision thereof requested by one or more of the parties, is not unanimously agreed upon, then the conciliation will cease, without prejudice to any of the parties involved. If unanimity is not reached, the conciliator will note in a report to the Commission, which shall be served on all parties, that the parties failed to reach agreement. Only if unanimity is reached will the informal advisory opinion, although not binding, be sent to all interested parties and be made available to the public.

(b) There will be no appeal from, or review of, such opinions and any party may pursue any further course of action under any other rule or statute that it deems advisable. [Rule 406.]

Subpart V—Paperwork Reduction Act

§ 502.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this part comply with the Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement:

Section	Current OMB control No.
502.27 (Form FMC.12)	3072-0001

PART 503—PUBLIC INFORMATION

Subpart A—General

Sec.
503.1 Statement of policy.

Subpart B—Publication in the "Federal Register"

503.11 Materials to be published.
503.12 Effect of nonpublication.
503.13 Incorporation by reference.

Subpart C—Commission Opinions and Orders

503.21 Public records.
503.22 Current index.
503.23 Effect of noncompliance.
503.24 Documents available at the Communications Center.
503.25 Documents available at the Office of the Secretary.

Subpart D—Procedure Governing Availability of Commission Records

503.31 Indentification of records.
503.32 Records generally available.
503.33 Other records available upon written request.
503.34 Procedures on requests for documents.
503.35 Exceptions to availability of records.
503.36 Commission report of actions.

Subpart E—Fees

503.41 Policy and services available.
503.42 Payment of fees and charges.
503.43 Fees for services.

Subpart F—Information Security Program

503.51 Definitions.
503.52 Senior agency official.
503.53 Oversight Committee.
503.54 Original classification.
503.55 Derivative classification.
503.56 General declassification policy.
503.57 Mandatory review for declassification.
503.58 Appeals of denials of mandatory declassification review requests.
503.59 Safeguarding classified information.

Subpart G—Access to Any Record of Identifiable Personal Information

503.60 Definitions.
503.61 Conditions of disclosure.
503.62 Accounting of disclosures.
503.63 Request for information.
503.64 Commission procedure on request for information.
503.65 Request for access to records.
503.66 Amendment of a record.
503.67 Appeals from denial of request for amendment of a record.
503.68 Exemptions.
503.69 Fees.

Subpart H—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

503.70 Policy.
503.71 Definitions.
503.72 General rule-meetings.
503.73 Exceptions-meetings.
503.74 Procedures for closing a portion or portions of a meeting or a portion or portions of a series of meetings on agency initiated requests.
503.75 Procedures for closing a portion of a meeting on request initiated by an interested person.
503.76 Effect of vote to close a portion or portions of a meeting or series of meetings.
503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.
503.78 General rule-information pertaining to meeting.
503.79 Exceptions-information pertaining to meeting.
503.80 Procedures for withholding information pertaining to meeting.
503.81 Effect of vote to withhold information pertaining to meeting.
503.82 Public announcement of agency meeting.
503.83 Public announcement of changes in meeting.
503.84 [Reserved]
503.85 Agency recordkeeping requirements.
503.86 Public access to records.
503.87 Effect of provisions of this subpart on any other subpart.

Authority: 5 U.S.C. 552, 552a, 552b, 553, E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

Subpart A—General

§ 503.1 Statement of policy.

(a) The Chairman of the Federal Maritime Commission is responsible for the effective administration of the provisions of Pub. L. 89–487, as amended. The Chairman shall carry out this responsibility through the program and the officials as hereinafter provided in this part.

(b) In addition, the Chairman, pursuant to his responsibility, hereby

directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information, records, decisions or submittals in accordance with the provisions of § 503.31.

Subpart B—Publication in the "Federal Register"

§ 503.11 Materials to be published.

(a) The Commission shall separately state and concurrently publish the following materials in the **Federal Register** for the guidance of the public:

(1) Descriptions of its central and field organization and the established places at which the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(5) Every amendment, revision, or repeal of the foregoing.

(b) The Commission's publication with respect to paragraph (a)(1) of this section has been and shall continue to be by publication in the **Federal Register** of the Rules and Regulations, Commission Order No. 1 (Amended), and amendments and supplements thereto.

(c) The Commission's publications with respect to paragraphs (a)(2), (a)(3), and (a)(4) of this section, including amendments, revisions, and repeals, have been and shall continue to be by publication in the **Federal Register** as part of the Code of Federal Regulations, Title 46, Chapter IV.

§ 503.12 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the **Federal Register** and not so published.

§ 503.13 Incorporated by reference.

For purposes of this subpart, matter which is reasonably available to the class of persons affected hereby shall be deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Office of the **Federal Register**.

Subpart C—Commission Opinions and Orders

§ 503.21 Public records.

(a) The Commission shall, in accordance with this part, make the following materials available for public inspection and copying:

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.

(2) Those statements of poilcy and interpretations which have been adopted by the Commission.

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(b) To prevent unwarranted invasion of personal privacy, the Commission may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each case, explain in writing the justification for the deletion.

§ 503.22 Current index.

The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by Subpart B of this part to be made available or published. The index shall be available at the Office of the Secretary, Washington, D.C. 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor made in accordance with Subpart D of this part.

§ 503.23 Effect of noncompliance.

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited, as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

§ 503.24 Documents available at the Communications Center.

The following documents have been promulgated by the Commission and are available for inspection and copying at the Commission's Communications Center, 1100 L Street, NW., Washington, D.C. 20573:

(a) Rules and regulations of the Commission including general substantive rules.

(b) Rules of Practice and Procedure.

(c) Annual reports of the Commission.

(d) Shipping Act, 1916, Shipping Act of 1984, and related acts.

§ 503.25 Documents available at the Office of the Secretary.

The following documents are available for inspection and copying at the Federal Maritime Commission, Office of the Secretary, Washington, D.C. 20573:

(a) Proposed rules.

(b) Final rules.

(c) Report of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings and pertinent correspondence.

(d) Press releases, biographies, etc.

(e) Pamphlets.

(f) Official docket files (transcripts, exhibits, briefs, etc.) in all formal proceedings.[1]

(g) Approved minutes showing final votes.

(h) Correspondence to or from the Commission or Administrative Law Judges concerning docketed proceedings.

Subpart D—Procedure Governing Availability of Commission Records

§ 503.31 Identification of records.

A member of the public who requests permission to inspect, copy or be provided with any records described in §§ 503.11, 503.21, 503.24 and 503.25 shall:

(a) Reasonably describe the record or records sought; and

(b) Submit such request in writing to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Any such request shall be clearly marked on the exterior with the letters FOIA.

§ 503.32 Records generally available.

The following records are available for inspection and copying upon request in writing addressed to the Office of the Secretary:

[1] Copies of transcripts may be purchased from the reporting company contracted for by the Commission. Contact the Office of the Secretary for the name and address of this company.

(a) Agreements filed and in effect pursuant to section 15 of the Shipping Act, 1916 and sections 5 and 6 of the Shipping Act of 1984.

(b) Agreements filed under section 15 of the Shipping Act, 1916 and section 5 of the Shipping Act of 1984 which have been noticed in the **Federal Register.**

(c) Tariffs filed under the provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Shipping Act of 1984.

(d) Terminal tariffs filed pursuant to Part 515 of this chapter.

(e) List of certifications of financial responsibility pertaining to Pub. L. 89–777.

(f) List of licensed ocean freight forwarders.

§ 503.33 Other records available upon written request.

Any written request to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573, for records listed in paragraphs (a) through (e), inclusive, of this section, shall identify the record as provided in § 503.31. The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area, and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of § 503.34. There follows the categories of records subject to this provision:

(a) Correspondence:

(1) General correspondence.

(2) Correspondence regarding interpretation or applicability of a statute or rule.

(3) Correspondence regarding methods of compliance with rules and regulations.

(4) Correspondence and reports on legislation if made public by the Office of Management and Budget and the appropriate Congressional Committee.

(b) Staff reports served on a party at interest.

(c) Filings:

(1) Reports on self-policing.

(2) Notice of admission and denial of conference membership.

(3) Procedures and reports regarding shippers' requests and complaints.

(4) Applications for license as ocean freight forwarder with the exceptions of those portions protected from public disclosure under the Freedom of Information Act.

(d) Staff records:

(1) Advisory opinions to the public.

(2) Nonconfidential records.

(e) Court records in which the Commission is a party.

(1) Briefs filed in court.

(2) Court decisions.

§ 503.34 Procedures on requests for documents.

(a) Determination of compliance with requests for documents.

(1) Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Secretary within ten (10) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request.

(3) The Secretary shall immediately notify the party making such request of the determination made, the reasons therefor, and, in the case of a denial of such request, shall notify the party of its right to appeal that determination to the Chairman.

(b) Appeals from adverse determination (denial of request).

(1) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Secretary may appeal such determination. Any such appeal shall be addressed to: Chairman, Federal Maritime Commission, Washington, D.C. 20573, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Secretary in the case of a total denial of the request, or within a reasonable time following request, or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Secretary, the Chairman of the Federal Maritime Commission, or the Chairman's specific delegate in his or her absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of paragraph 4 of subsection (a) of the FOIA (Pub. L. 93–502, 88 Stat. 1561–1562, November 21, 1974) regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances, as specified in this paragraph, the time limits prescribed with respect to initial actions or actions on appeal may be extended by written notice from the Secretary of the Commission to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by Commission to meet the time limitation.* Failure by the Commission either to deny or grant any request for documents within the time limits prescribed by FOIA (5 U.S.C. 522, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

§ 503.35 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records shall not be available:

(1) Records specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive Order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated

the record as nonpublic under Executive Order.

(2) Records related solely to the internal personnel rules and practices of the Commission. Such records relate to those matters which are for the guidance of Commission personnel with respect to their employment with the Federal Maritime Commission.

(3) Records specifically exempted from disclosure by statute.

(4) Information given in confidence. This includes information obtained by or given to the Commission which constitutes trade secrets, confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(5) Interagency or interagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission, the Secretary, and the General Counsel, regarding the preparation of Commission orders and decisions, other documents received or generated in the process of issuing an order, decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy. This exemption includes all personnel and medical records and all private, personal, financial, or business information contained in other files which, if disclosed to the public, would invade the privacy of any person, including members of the family of the person to whom the information pertains.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by any agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative tehniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel. Any record, portions of which are exempt under the provisions of this section, will be provided to any person requesting such record after the exempt portions thereof have been deleted, provided such nonexempt portions are reasonably segregable.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

§ 503.36 Commission report of actions.

On or before March 1 of each calendar year, the Federal Maritime Commission shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. This report shall include:

(a) The number of determinations made by the Federal Maritime Commission not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reasons for the action upon each appeal that results in a denial of information.

(c) The name and title or position of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of FOIA, as amended November 21, 1974, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Commission implementing the provisions of the FOIA, as amended November 21, 1974.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer fully the provisions of the FOIA, as amended.

Subpart E—Fees

§ 503.41 Policy and services available.

Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such service are to be recovered by the payment of fees (Act of August 31, 1951–5 U.S.C. 140).

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed:

(1) Copying records/documents.

(2) Certification of copies of documents.

(3) Records search.

(b) Fees shall also be assessed for the following services provided by the Commission:

(1) Subscriptions to Commission publications.

(2) Placing one's name, as an interested party, on the mailing list of a docketed proceeding.

(3) Processing nonattorney applications to practice before the Commission.

§ 503.42 Payment of fees and charges.

The fees charged for special services may be paid through the mail by check, draft, or postal money order, payable to the Federal Maritime Commission, except for charges for transcripts of hearings. Transcripts of hearings, testimony and oral argument are furnished by a nongovernmental contractor, and may be purchased directly from the reporting firm.

§ 503.43 Fees for services.

The basic fees set forth below provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(a) Photo-copying of records and documents performed by requesting party will be available at the rate of five cents per page (one side), limited to size 8½" x 14" or smaller.

(b) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5 for each such certification.

(c) To the extent that time can be made available, records and information search and/or copying will be performed by Commission personnel for reimbursement at the following rates. Any such charges are in addition to a five cent per page charge for copies provided.

(1) By clerical personnel at a rate of $7 per person per hour.

(2) By professional personnel at an actual hourly cost basis to be established prior to search.

(3) Minimum charge for record and information search, $7.

(4) Minimum charge for copying services performed by Commission personnel, $2.50.

(d) Annual subscriptions to Commission publications for which there are regular mailing lists are available at the charges indicated below for calendar year terms. Subscriptions for periods of less than a full calendar year will be prorated on a quarterly basis. No provision is made for refund upon cancellation of subscription by a purchaser.

(1) Orders, notices, rulings, and decisions (initial and final) issued by Administrative Law Judges and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of $195.

(2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of $120.

(3) General rules and regulations of the Commission are available at the following rates: (i) Initial set including all current regulations for a fee of $16.50, and (ii) an annual subscription rate of $8.25 for all amendments to existing regulations and any new regulations issued.

(4) *Exceptions.* No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of the above Commission publications individually requested in person or by mail. In addition, a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(i) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(ii) The recipient is another governmental agency, Federal, State, or local, concerned with the domestic or foreign commerce by water of the United States or, having a legitimate interest in the proceedings and activities of the Commission.

(iii) The recipient is a college or university.

(iv) The recipient does not fall within paragraphs (d)(4)(i), (d)(4)((ii), or (d)(4)(iii) of this section but is determined by the Commission to be appropriate in the interest of its programs.

(e) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $3 per proceeding.

(f) The FMC guide on the shipping of automobiles, entitled "Automobile Manufacturers' Measurements," is available from the U.S. Government Printing Office, on a subscription basis.

(g) Loose-leaf reprint of the Commission's complete, current Rules of Practice and Procedure, Part 502 of this chapter, for an initial fee of $4.25. Future amendments to the reprint are available at an annual subscription rate of $4.

(h) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $13 pursuant to § 502.27 of this chapter.

(i) Upon a determination by the Commission that waiver or reduction of the fees prescribed in this section is in the public interest because the information furnished has been determined to be of primary benefit to the general public, such information shall be furnished without charge or at a reduced charge at the discretion of the Commission.

(j) Additional issuances, publications and services of the Commission may be made available for fees to be determined by the Secretary which fees shall not exceed the cost to the Commission for providing them.

Subpart F—Information Security Program

§ 503.51 Definitions.

(a) *"Original Classification"* means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, together with a classification designation signifying the level of protection required.

(b) *"Derivative Classification"* means a determination that information is in substance the same as information currently classified, and the application of the same classification markings.

(c) *"Declassification date or event"* means a date or event upon which classsified information is automatically declassified.

(d) *"Downgrading date or event"* means a date or event upon which classified information is automatically downgraded in accordance with appropriate downgrading instructions on the classified materials.

(e) *"National Security"* means the national defense or foreign relations of the United States.

(f) *"Foreign government information"* means either information provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

§ 503.52 Senior agency official.

The Chairman of the Commission shall designate a senior agency official to be the Security Officer for the Commission who shall be responsible for directing and administering the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356.

§ 503.53 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Security Officer with the following responsibilities:

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 12356, and Information Security Oversight Office Directive No. 1. The program shall include initial, refresher, and termination briefings;

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons;

(c) Act on all suggestions and complaints concerning the Commission's information security program;

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 12356; and

(e) Consider and decide other questions concerning classification and declassification that may be brought before it.

§ 503.54 Original classification.

(a) No Commission Member or employee has the authority to classify any Commission originated information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in § 503.51(f), the

Member or employee shall immediately notify the Security Officer and appropriately protect the information.

(c) If the Security Officer believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority.

§ 503.55 Derivative classification.

(a) Any document that includes paraphrases, restatements, or summaries of, or incorporates in new form, information that is already classified, shall be assigned the same level of classification as the sources, unless consultation with originators or instructions contained in authorized classification guides indicate that no classification, or a lower classification than originally assigned, should be used.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions, and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) A derivative document that derives its classification from the approved use of the classification guide of another agency shall bear the declassification date required by the provisions of that classification guide.

(d) Documents classified derivatively on the basis of source documents or classification guides shall bear all applicable markings prescribed in Sections 2001.5(a) through 2001.5(e), Information Security Oversight Office Directive No. 1.

(1) *Classification authority.* The authority for classification shall be shown as follows:

(i) *"Classified by (description of source documents or classification guide)", or*

(ii) *"Classified by Multiple Sources"*, if a document is classified on the basis of more than one source document or classification guide.

(iii) In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "Classified by Multiple Sources" shall cite the source document in its "Classified by" line rather than the term "Multiple sources."

(2) *Declassification and downgrading instructions.* Date or events for automatic declassification or downgrading, or the notation "Originating Agency's Determination Required" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on "declassify on" line as follows:

"Declassify on: (date, description of event); or
"Originating Agency's Determination Required (OADR)."

§ 503.56 General declassification policy.

(a) The Commission exercises declassification and downgrading authority in accordance with Section 3.1 of Executive Order 12356, only over that information originally classified by the Commission under previous Executive Orders. Declassification and downgrading authority may be exercised by the Commission Chairman and the Commission Security Officer, and such others as the Chairman may designate. Commission personnel may not declassify information originally classified by other agencies.

(b) The Commission does not now have original classification authority nor does it have in its possession any documents that it originally classified when it had such authority. The Commission has authorized the Archivist of the United States to automatically declassify information originally classified by the Commission and under its exclusive and final declassification jurisdiction at the end of 20 years from the date of original classification.

§ 503.57 Mandatory review for declassification.

(a) Information originally classified by the Commission shall be subject to a review for declassification by the Commission, if:

(1) A request is made by a United States citizen or permanent resident alien, a federal agency, or a state or local government; and

(2) A request describes the documents or material containing the information with sufficient specificity to enable the Commission to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(b) Requests for mandatory declassification reviews of documents originally classified by the Commission shall be in writing, and shall be sent to the Security Officer, Federal Maritime Commission, Washington, D.C. 20573.

(c) If the request requires the provision of services by the Commission, fair and equitable fees may be charged under Title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C 483a.

(d) Requests for mandatory declassification reviews shall be acknowledged by the Commission within 15 days of the date of receipt of such requests.

(e) If the document was originally classified by the Commission, the Commission Security Officer shall forward the request to the Chairman of the Commission for a determination of whether the document should be declassified.

(f) If the document was derivatively classified by the Commission or originally classified by another agency, the request, the document, and a recommendation for action shall be forwarded to the agency with the original classification authority. The Commission may, after consultation with the originating agency, inform the requester of the referral.

(g) If a document is declassified in its entirety, it may be released to the requester, unless withholding is otherwise warranted under applicable law. If a document or any part of it is not declassified, the Security Officer shall furnish the declassified portions to the requester unless withholding is otherwise warranted under applicable law, along with a brief statement concerning the reasons for the denial of the remainder, and the right to appeal that decision to the Commission within 60 days.

(h) If a declassification determination cannot be made within 45 days, the requester shall be advised that additional time is needed to process the request. Final determination shall be made within one year from the date of receipt unless there are unusual circumstances.

(i) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12356, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its

existence or non-existence is itself classifiable under Executive Order 12356.

§ 503.58 Appeals of denials of mandatory declassification review requests.

(a) Within 60 days after the receipt of denial of a request for mandatory declassification reveiw, the requester may submit an appeal in writing to the Commission through the Secretary, Federal Maritime Commission, Washington, D.C. 20573. The appeal shall:

(1) Identify the document in the same manner in which it was identified in the original request;

(2) Indicate the dates of the request and denial, and the expressed basis for the denial; and

(3) State briefly why the document should be declassified.

(b) The Commission shall rule on the appeal within 30 days of receiving it. If additional time is required to make a determination, the Commission shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Commission shall notify the requester in writing of the final determination and the reasons for any denial.

(c) A determination by the Commission under paragraph (b) of this section is final and no further administrative appeal will be permitted. However, the requester may be informed that suggestions and complaints concerning the information security program prescribed by Executive Order 12356 may be submitted to the Director, Information Security Oversight Officer, GSA(AT), Washington, D.C. 20540.

§ 503.59 Safeguarding classified information.

(a) All classified information shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

(b) Whenever classified material is removed from a storage facility, such material shall not be left unattended and shall be protected by attaching an appropriate classified document cover sheet to each classified document.

(c) Classified information being transmitted from one Commission office to another shall be protected with a classified document cover sheet and hand delivered by an appropriately cleared person to another appropriately cleared person.

(d) Classified information shall be made available to a person only when the possessor of the Classified information has determined that the person seeking the classified information has a valid security clearance at least commensurate with the level of classification of the information and has established that access is essential to the accomplishment of authorized and lawful Government purposes.

(e) The requirement in paragraph (d) of this section, that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes, may be waived as provided in paragraph (f) of this section for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policy-making positions to which they were appointed by the President.

(f) Waivers under paragraph (e) of this section may be granted when the Commission Security Officer:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from authorized disclosure or compromise, and ensures that the information is properly safeguarded; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(g) Persons seeking access to classified information in accordance with paragraphs (e) and (f) of this section must agree in writing:

(1) To be subject to a national security check;

(2) To protect the classified information in accordance with the provisions of Executive Order 12356; and

(3) Not to publish or otherwise reveal to unauthorized persons any classified information.

(h) Except as provided by directives issued by the President through the National Security Council, classified information that originated in another agency may not be disseminated outside the Commission.

(i) Only appropriately cleared personnel may receive, transmit, and maintain current access and accountability records for classified material.

(j) Each office which has custody of classified material shall maintain:

(1) A classified document register or log containing a listing of all classified holdings, and

(2) A classified document destruction register or log containing the title and date of all classified documents that have been destroyed.

(k) An inventory of all documents classified higher than confidential shall be made at least annually and whenever there is a change in classified document custodians. The Commission Security Office shall be notified, in writing, of the results of each inventory.

(l) Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(m) Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to the combination; whenever a combination has been subject to possible compromise; whenever the equipment is taken out of service; and at least once each year. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. One copy of the record of each combination shall be provided to the Commission Security Officer.

(n) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. The Commission Security Officer shall conduct periodic inspections to determine if the procedural safeguards prescribed in this subpart are in effect at all times.

(o) Whenever classified material is to be transmitted outside the Commission, the custodian of the classified material shall contact the Commission Security Officer for preparation and receipting instructions. If the material is to be hand carried, the Security Officer shall ensure that the person who will carry the material has the appropriate security clearance, is knowledgeable of safeguarding requirements, and is briefed, if appropriate, concerning restrictions with respect to carrying classified material on commercial carriers.

(p) Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access to it, to include securing it in approved equipment or facilities, whenever it is not under the direct supervision of authorized persons.

(q) Employees of the Commission shall be subject to appropriate sanctions, which may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other

sanctions in accordance with applicable law and agency regulation, if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 12356 or predecessor orders;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12356 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 12356 or implementing directive.

(r) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to his or her supervisor and the Commission Security Officer, who shall conduct an immediate inquiry into the matter.

(s) Questions with respect to the Commission Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Commission Security Officer.

Subpart G—Access to Any Record of Indentifiable Personal Information

§ 503.60 Definitions.

For the purpose of this subpart:

(a) *"Agency"* means each authority of the government of the United States as defined in 5 U.S.C. 551(1) and shall include any executive department, military department, government corporation, government controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(b) *"Commission"* means the Federal Maritime Commission.

(c) *"Individual"* means a citizen of the United States or an alien lawfully admitted for permanent residence to whom a record pertains.

(d) *"Maintain"* includes maintain, collect, use, or disseminate.

(e) *"Person"* means any person not an individual and shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(f) *"Record"* means any item, collection, or grouping of information about an individual that is maintained by the Federal Maritime Commission, including but not limited to a person's education, financial transactions, medical history, and criminal or employment history, and that contains the person's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(g) *"Routine use"* means [with respect to the disclosure of a record], the use of such records for a purpose which is compatible with the purpose for which it was collected.

(h) *"Statistical record"* means a record in a system of records, maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an indentifiable individual, but shall not include matter pertaining to the Census as defined in 13 U.S.C 8.

(i) *"System of records"* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

§ 503.61 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Commission shall not disclose any record which is contained in a system of records, by any means of communication, to any person or other agency who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Commission may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Commission may disclose any such record, provided such disclosure is:

(1) To those offices and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C 552);

(3) For a routine use;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Commission with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States, as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Secretary of the Commission specifying the particular record and the law enforcement activity for which it is sought;

(8) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee, subcommittee, or joint committee of Congress;

(9) To the Comptroller General, or any authorized representative, thereof, in the course of the performance of the duties of the GAO; or

(10) Under an order of a court of competent jurisdiction.

§ 503.62 Accounting of disclosures.

(a) The Secretary shall make an accounting of each disclosure of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and 552a(c)(2).

(b) Except for a disclosure made under § 503.61(c)(7), the Secretary shall make the accounting described in paragraph (a) of this section available to any individual upon written request made in accordance with § 503.63(b) or § 503.63(c).

(c) The Secretary shall make reasonable efforts to notify the individual when any record which pertains to such individual is disclosed to any person under compulsory legal process, when such process becomes a matter of public record.

§ 503.63 Request for information.

(a) Upon request, in person or by mail, made in accordance with the provisions of paragraph (b) or (c) of the section, any individual shall be informed whether or not any Commission system or records contains a record pertaining to him or her.

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 and shall:

(1) Provide information sufficient, in the opinion of the Secretary, to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card or medicare card;

(3) Complete and sign the appropriate form provided by the Secretary.

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 and shall include in such request the following:

(1) Information sufficient in the opinion of the Secretary to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) A signed notarized statement to verify his or her identity.

§ 503.64 Commission procedure on request for information.

Upon request for information made in accordance with § 503.63, the Secretary or his or her delegate shall, within 10 days (excluding Saturdays, Sundays, and legal public holidays), furnish in writing to the requesting party notice of the existence or nonexistence of any records described in such request.

§ 503.65 Request for access to records.

(a) *General.* Upon request by any individual made in accordance with the procedures set forth in paragraph (b) of this section, such individual shall be granted access to any record pertaining to him or her which is contained in a Commission system of records. However, nothing in this section shall allow an individual access to any information compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a record pertaining to him or her in person or by mail in accordance with paragraphs (b)(1) and (b)(2) of this section:

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 and shall:

(i) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card, or medicare card; and

(ii) Complete and sign the appropriate form provided by the Secretary.

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, and shall include therein a signed notarized statement to verify his or her identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his or her own choosing, while reviewing the record requested.

If an individual elects to be so accompanied, he or she shall notify the Secretary of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the acompanying person. Failure to so notify the Secretary in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *Commission determination of requests for access.* (1) Upon request made in accordance with this section, the Secretary or his or her delegate shall:

(i) Determine whether or not such request shall be granted;

(ii) Make such determination and provide notification within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such request, and, if such request is granted shall;

(iii) Notify the individual that fees for reproducing copies will be make in accordance with § 503.69.

(2) If access to a record is denied because such information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, or for any other reason, the Secretary shall notify the individual of such determination and his or her right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making such request shall notify the Secretary whether the records requested are to be copied and mailed to the individual.

(2) If records are to be made available for personal inspection, the individual shall arrange with the Secretary a mutually agreeable time and place for inspection of the record.

(3) Fees for reproducing and mailing copies of records will be made in accordance with § 503.69.

§ 503.66 Amendment of a record.

(a) *General.* Any individual may request amendment of a record pertaining to him or her according to the procedure in paragraph (b) of this section.

(b) *Procedures for request amendment of a record.* After inspection of a record pertaining to him or her, an individual may file with the Secretary a request, in person or by mail, for amendment of a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) *Commission procedures on request for amendment of a record.* (1) Not later than ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of a request made in accordance with this section to amend a record in whole or in part, the Secretary or his or her delegate shall:

(i) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(ii) Inform the individual, by certified mail, return receipt requested, of refusal to amend the record, setting out the reasons therefor, and notify the individual of his or her right to appeal that determination to the Chairman of the Commission under § 503.67.

(2) The Secretary shall inform any person or other agency to whom a record has been disclosed of any correction or notation of dispute made by the Secretary with respect to such records, in accordance with 5 U.S.C. 552a(c)(4) referring to amendment of a record, if an accounting of such disclosure has been made.

§ 503.67 Appeals from denial of request for amendment of a record.

(a) *General.* An individual whose request for amendment of a record pertaining to him or her is denied, may further request a review of such determination in accordance with paragraph (b) of this section.

(b) *Procedure for appeal.* Not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) following receipt of notification of refusal to amend, an individual may file an appeal to amend the record. Such appeal shall:

(1) Be addressed to the Chairman, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573; and

(2) Specify the reasons for which the refusal to amend is challenged.

(c) *Commission procedure on appeal.* (1) Upon appeal from a denial to amend a record, the Chairman of the Commission or the officer designated by the Chairman to act in his or her absence, shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than thirty (30) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(2) The Chairman shall also notify the individual of the provisions of 5 U.S.C. 552a(g)(1)(A) regarding judicial review of the Chairman's determination.

(3) If, on appeal, the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the Commission's determination.

(d) The Chairman, or his or her delegate in his or her absence, may extend up to thirty (30) days the time period prescribed in paragraph (c)(1) of this section within which to make a determination on an appeal from refusal to amend a record for the reasons that a fair and equitable review cannot be completed within the prescribed time period.

§ 503.68 Exemptions.

The Chairman of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b) (1), (2) and (3), 553(c) and 553(e) (Administrative Procedure Act—Rulemaking), to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

§ 503.69 Fees.

(a) *General.* The following Commission services are available, with respect to requests made under the provisions of this subpart, for which fees will be charged as provided in paragraph (b) and (c) of this section:

(1) Copying records/documents.

(2) Certification of copies of documents.

(b) *Fees for services.* The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) The copying of records and documents will be available at the rate of 30 cents per page (one side), limited to size 8¼" x 14" or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5 for each certification.

(c) *Payment of fees and charges.* The fees charged for special services may be paid by check, draft, or postal money order, payable to the Federal Maritime Commission.

Subpart H—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

§ 503.70 Policy.

It is the policy of the Federal Maritime Commission, under the Provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b, September 13, 1976) to entitle the public to the fullest practicable information regarding the decisional processes of the Commission. The provisions of this Subpart set forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of the Commission in carrying out its responsibilities under the shipping statutes administered by this Commission.

§ 503.71 Definitions.

The following definitions apply for purposes of this subpart:

(a) *"Agency"* means the Federal Maritime Commission;

(b) *"Information pertaining to a meeting"* means, but is not limited to the following: the record of any agency vote taken under the provisions of this subpart, and the record of the vote of each member; a full written explanation of any agency action to close any portion of any meeting under this Subpart; lists of persons expected to attend any meeting of the agency and their affiliation; public announcement by the agency under this subpart of the time, place, and subject matter of any meeting or portion of any meeting; announcement of whether any meeting or portion of any meeting shall be open to public observation or be closed; any announcement of any change regarding any meeting or portion of any meeting; and the name and telephone number of the Secretary of the agency who shall be designated by the agency to respond to requests for information concerning any meeting or portion of any meeting;

(c) *"Meeting"* means the deliberations of at least three of the members of the agency which determine or result in the joint conduct of disposition of official agency business, but does not include: (1) Individual member's consideration of official agency business circulated to the members in writing for disposition on notation; (2) deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in §§ 503.74 and 503.75; (3) deliberations by the agency in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting or series of meetings as provided in § 503.80; or (4) deliberations pertaining to any change in any meeting or to changes in the public announcement of such a meeting as provided in § 503.83;

(d) *"Member"* means each individual Commissioner of the agency;

(e) *"Person"* means any individual, partnership, corporation, association, or public or private organization, other than an agency as defined in 5 U.S.C. 551(1));

(f) *"Series of meetings"* means more than one meeting involving the same particular matters and scheduled to be held no more than thirty (30) days after the initial meeting in such series.

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75 and 503.76, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

(b) The opening of a portion or portions of a meeting or a portion or portions of a series of meetings to public observation shall not be construed to include any participation by the public in any manner in the meeting. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the agency.

§ 503.73 Exception—meetings.

Except in a case where the agency finds that the public interest requires otherwise, the provisions of § 503.72(a) shall not apply to any portion or portions of an agency meeting or portion or portions of a series of meetings where the agency determined under the provisions of § 503.74 or § 503.75 that such portion or portions of such meeting or series of meetings is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of any agency;

(c) Disclose matters specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 503.74 Procedures for closing a portion or portions of a meeting or a portion or portions of a series of meetings on agency initiated requests.

(a) Any member of the agency or the General Counsel of the agency may request that any portion or portions of a series of meetings be closed to public observation for any of the reasons provided in § 503.73 by submitting such request in writing to the Secretary of the agency in sufficient time to allow the Secretary to schedule a timely vote on the request pursuant to paragraph (b) of this section.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary of the agency shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later then eight (8) days prior to the scheduled meeting of the agency.

(c) At the time the Secretary schedules a time for an agency vote as described in paragraph (b) of this section, he or she shall forward the request to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(d) At the time scheduled by the Secretary as provided in paragraph (b) of this section, the members of the agency, upon consideration of the request submitted under paragraph (a) of this section and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting may be closed to public observation for any of the reasons provided in § 503.73, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in § 503.73 permitting the closing of any meeting to public observation.

(e) In the case of a vote on a request under this section to close to public observation a portion or portions of a meeting, no such portion or portions of any meeting may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a meeting by recorded vote.

(f) In the case of a vote on a request under this section to close to public observation a portion or portions of a series of meetings as defined in § 503.71, no such portion or portions of a series of meetings may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a series of meetings. A determination to close to public observation a portion or portions of a series of meetings may be accomplished by a single vote on each of the issues described in paragraph (d) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

§ 503.75 Procedures for closing a portion of a meeting on request initiated by an interested person.

(a) Any person as defined in § 503.71, whose interests may be directly affected by a portion of a meeting of the agency, may request that the agency close that portion of a meeting for the reason that matters in deliberation at that portion of the meeting are such that public disclosure of that portion of a meeting is likely to:

(1) Involve accusing any person of a crime, or formally censuring any person;

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; or

(3) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the exent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(b) Any person described in paragraph (a) of this section who submits a request that a portion of a meeting be closed shall submit an original and 15 copies of that request to the Secretary, Federal Maritime Commission, Washington, D.C 20573, and shall state with particularity that portion of a meeting sought to be closed and the reasons therefor as described in paragraph (a) of this section.

(c) Upon receipt of any request made under paragraphs (a) and (b) of this section, the Secretary of the agency shall:

(1) Furnish a copy of the request to each member of the agency; and

(2) Furnish a copy of the request to the General Counsel of the agency.

(d) Upon receipt of a request made under paragraphs (a) and (b) of this section, any member of the agency may request agency action upon the request to close a portion of a meeting by notifying the Secretary of the agency of that request for agency action.

(e) Upon receipt of a request for agency action under paragraph (d) of this section, the Secretary of the agency shall schedule a time for an agency vote upon the request of the person whose interests may be directly affected by a portion of a meeting, which vote shall take place prior to the scheduled meeting of the agency.

(f) At the time the Secretary receives a request for agency action and schedules a time for an agency vote as described in paragraph (e) of this section, the request of the person whose interests may be directly affected by a portion of a meeting shall be forwarded to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(g) At the time scheduled by the Secretary, as provided in paragraph (e) of this section, the members of the agency, upon consideration of the request of the person whose interests may be directly affected by a portion of a meeting submitted under paragraphs (a) and (b) of this section, and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting or portion or portions of a series of meetings may be closed to public observation for any of the reasons provided in paragraph (a) of this section, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in paragraph (a) of this section permitting the closing of any portion of any meeting to public observation.

(h) In the case of a vote on a request under this section to close to public observation a portion of a meeting, such portion of a meeting may be closed unless, by a vote on the issues described in paragraph (g) of this section, a majority of the entire membership of the agency shall vote to close such portion of a meeting by a recorded vote.

§ 503.76 Effect of vote to close a portion or portions of a meeting or series of meetings.

(a) Where the agency votes as provided in § 503.74 or § 503.75, to close to public observation a portion or portions of a meeting or a portion or portions of a series of meetings, the portion or portions of a meeting or the portion or portions of a series of meetings shall be closed.

(b) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74 or § 503.75, by which it is determined to close a portion or portions of a meeting or a portion or portions of a series of meetings to public observation, the Secretary shall make available to the public:

(1) A written copy of the recorded vote reflecting the vote of each member of the agency;

(2) A full written explanation of the agency action closing that portion or those portions to public observation; and

(3) A list of the names and affiliations of all persons expected to attend the portion or portions of the meeting or the portion or portions of a series of meetings.

(c) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74, or § 503.75, by which it is determined that the portion or portions of a meeting or the portion or portions of a series of meetings shall remain open to public observation, the Secretary shall make available to the public a written copy of the recorded vote reflecting the vote of each member of the agency.

§ 503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.

(a) Upon any request that the agency close a portion or portions of any meeting or any portion or portions of any series of meetings under the provisions of §§ 503.74 and 503.75, the General Counsel of the agency shall certify in writing to the agency, prior to an agency vote on that request, whether or not in his or her opinion the closing of any such portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b). If, in the opinion of the General Counsel, the closing of a portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b), his or her certification of that opinion shall cite each applicable, particular, exemptive provision of that Act and provision of this subpart.

(b) A copy of the certification of the General Counsel as described in paragraph (a) of this section, together with a statement of the officer presiding over the portion or portions of any meeting or the portion or portions of a series of meetings setting forth the time and place of the relevant meeting or meetings, and the persons present, shall be maintained by the Secretary for public inspection.

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79, 503.80 and 503.81.

(b) All inquiries as to the status of pending matters which were considered by the Commission in closed session should be directed to the Secretary of the Commission. Commission personnel who attend closed meetings of the Commission are prohibited from disclosing anything that occurs during those meetings. An employee's failure to respect the confidentiality of closed meetings constitutes a violation of Commission's General Standards of Conduct. The Commission can, of course, determine to make public the events or decisions occurring in a closed meeting, such information to be disseminated by the Office of the Secretary. An inquiry to the Office of the Secretary as to whether any information has been made public is not, therefore, improper. However, a request of or attempt to persuade a Commission employee to divulge the contents of a closed meeting constitutes a lack of proper professional conduct inappropriate to a person practicing before this agency, and requires that the employee file a report of such event so that a determination can be made whether disciplinary action should be initiated pursuant to § 502.30 of this chapter.

§ 503.79 Exceptions—information pertaining to meeting.

Except in a case where the agency finds that the public interest requires otherwise, information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings need not be disclosed by the agency if the agency determines, under the provisions of §§ 503.80 and 503.81 that disclosure of that information is likely to disclose matters which are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(2) in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information, obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime, or formally censuring any person;

(f) Of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, or information which is written would be contained in such records, but only to the extent that the production of such record or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concerned with the agency's issuance of a subpena, the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency or a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 503.80 Procedures for withholding information pertaining to meeting.

(a) Any member of the agency, or the General Counsel of the agency may request that information pertaining to a portion or portions of a meeting or to a portion or portions of a series of meetings be withheld from public disclosure for any of the reasons set forth in § 503.79 by submitting such request in writing to the Secretary not later than two (2) weeks prior to the commencement of the first meeting in a series of meetings.

(b) Upon receipt of any request made under paragraph (b) of this section, the Secretary shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later than eight (8) days prior to the scheduled meeting of the agency.

(c) At the time scheduled by the Secretary in paragraph (b) of this section, the Members of the agency, upon consideration of the request submitted under paragraph (a) of this section, shall vote upon that request. That vote shall determine whether or not information pertaining to a meeting may be withheld from public disclosure for any of the reasons provided in § 503.79, and whether or not the public interest requires that the information be disclosed notwithstanding the applicability of the reasons provided in § 503.79 permitting the withholding from public disclosure of the information pertaining to a meeting.

(d) In the case of a vote on a request under this section to withhold from public disclosure information pertaining to a portion or portions of a meeting, no such information shall be withheld from public disclosure unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information by recorded vote.

(e) In the case of a vote on a request under this section to withhold information pertaining to a portion or portions of a series of meetings, no such information shall be withheld unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information. A determination to withhold information pertaining to a portion or portions of a series of meetings from public disclosure may be accomplished by a single vote on the issues described in paragraph (c) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

§ 503.81 Effect to vote to withhold information pertaining to meeting.

(a) Where the agency votes as provided in § 503.80 to withhold from public disclosure information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, such information shall be excepted from the requirements of §§ 503.78, 503.82 and 503.83.

(b) Where the agency votes as provided in § 503.80 to permit public disclosure of information pertaining to a portion of portions of a meeting or portion or portions of a series of meetings, such information shall be disclosed to the public as required by §§ 503.78, 503.82 and 503.83.

(c) Not later than the day following the date on which a vote is taken under § 503.80, by which the information pertaining to a meeting is determined to be disclosed, the Secretary shall make available to the public a written copy of such vote reflecting the vote of each member of the agency on the question.

§ 503.82 Public announcement of agency meeting.

(a) Except as provided in §§ 503,80 and 503.81 regarding a determination to withhold from public disclosure any information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, or as otherwise provided in paragraph (c) of this section, the Secretary of the agency shall make public announcement of each meeting of the agency.

(b) Except as otherwise provided in this section, public announcement of each meeting of the agency shall be accomplished not later than one week prior to commencement of a meeting or the commencement of the first meeting in a series of meetings, and shall disclose:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings shall be open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about a meeting.

(c) The announcement described in paragraphs (a) and (b) of this section

may be accomplished less than one week prior to the commencement of any meeting or series of meetings, provided the agency determines by recorded vote that the agency business requires that any such meeting or series of meetings be held at an earlier date. In the event of such a determination by the agency, public announcement as described in paragraph (b) of this section shall be accomplished at the earliest practicable time.

(d) Immediately following any public announcement accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the Federal Register disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings is open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§ 503.83 Public announcement of changes in meeting.

(a) Except as provided in §§ 503.80 and 503.81, under the provisions of paragraphs (b) and (c) of this section, the time or place of a meeting or series of meetings may be changed by the agency following accomplishment of the announcement and notice required by § 503.82, provided the Secretary of the agency shall publicly announce such change at the earliest practicable time.

(b) The subject matter of a portion or portions of a meeting or a portion or portions of a series of meetings, the time and place of such meeting, and the determination that the portion or portions of a series of meetings shall be open or closed to public observation may be changed following accomplishment of the announcement required by § 503.82, provided:

(1) The agency, by recorded vote of the majority of the entire membership of the agency, determines that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Secretary of the agency publicly announces, at the earliest practicable time, the change made and the vote of each member upon such change.

(c) Immediately following any public announcement of any change accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the Federal Register disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of any meeting or any portion or portions of any series of meetings is open or closed to public observation;

(5) Any change in paragraphs (c) (1), (c) (2), (c) (3), or (c) (4) of this section; and

(6) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§ 503.84 [Reserved]

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of this subpart, the following records shall be maintained by the Secretary of the agency:

(1) The certification of the General Counsel of the agency required by § 503.77;

(2) A statement from the officer presiding over the portion or portions of the meeting or portion or portions of a series of meetings setting forth the time and place of the portion or portions of the meeting or portion or portions of the series of meetings, the persons present at those times; and

(3) Except as provided in paragraph (b) of this section, a complete transcript or electronic recording fully recording the proceedings at each portion of each meeting closed to public observation.

(b) In case the agency determines to close to public observation any portion or portions of any meeting or portion or portions of any series of meetings because public observation of such portion or portions of any meeting is likely to specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, the agency may maintain a set of minutes in lieu of the transcript of recording described in paragraph (a)(3) of this section. Such minutes shall contain:

(1) A full and clear description of all matters discussed in the closed portion of any meeting;

(2) A full and accurate summary of any action taken on any matter discussed in the closed portion of any meeting and the reasons therefor;

(3) A description of each of the views expressed on any matter upon which action was taken as described in paragraph (b)(2) of this section;

(4) The record of any rollcall vote which shall show the vote of each member on the question; and

(5) An identification of all documents considered in connection with any action taken on a matter described in paragraph (b)(1) of this section.

(c) All records maintained by the agency as described in this section shall be held by the agency for a period of not less than two (2) years following any meeting or not less than one (1) year following the conclusion of any agency proceeding with respect to which that meeting or portion of a meeting was held.

§ 503.86 Public access to records.

(a) All transcripts, electronic recordings or minutes required to be maintained by the agency under the provisions of §§ 503.85(a)(3) and 503.85(b) shall be promptly made available to the public by the Secretary of the agency, except for any item of discussion or testimony of any witnesses which the agency determines to contain information which may be withheld from public disclosure because its disclosure is likely to disclose matters which are:

(1)(i) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involved with accusing any person of a crime, or formally censuring any person;

(6) Of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concerned with the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in §§ 503.31 through 503.36.

(c) Records disclosed to the public under this section shall be furnished at the expense of the party requesting such access at the actual cost of duplication of transcription.

§ 503.87 Effect of provisions of this subpart on another subpart.

(a) Nothing in this subpart shall limit or expand the ability of any person to seek access to agency records under Subpart D (§§ 503.31 to 503.36) of this part except that the exceptions of § 503.86 shall govern requests to copy or inspect any portion of any transcript, electronic recordings or minutes required to be kept under this subpart.

(b) Nothing in this subpart shall permit the withholding from any individual to whom a record pertains any record required by this subpart to be maintained by the agency which record is otherwise available to such an individual under the provisions of Subpart G of this part.

Note.—This part does not contain any collection of information requests or requirements within the meaning of the Paperwork Reduction Act of 1980, Pub. L. 96–511.

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

Sec.
504.1 Purpose and scope.
504.2 Definitions.
504.3 General information.
504.4 Categorical exclusions.
504.5 Environmental assessments.
504.6 Finding of no significant impact.
504.7 Environmental impact statements.
504.8 Record of decision.
504.9 Information required by the Commission.
504.10 Time constraints on final administrative actions.
504.91 OBM control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 552, 553; Secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362)

§ 504.1 Purpose and scope.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA) and Executive Order 12114 and incorporates and complies with the Regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500 *et seq.*).

(b) This part applies to all actions of the Federal Maritime Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 21 of the Shipping Act, 1916 or section 15 of the Shipping Act of 1984. Penalty for non-compliance with a section 21 order is $100 a day for each day of default; penalty for falsification of such a report is a fine of up to $1,000 or imprisonment up to one year, or both. Penalty for violation of a Commission order under section 15 of the Shipping Act of 1984 may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. (Each day of a continuing violation constitutes a separate offense).

§ 504.2 Definitions.

(a) *"Shipping Act, 1916"* [46 U.S.C. app. 801–846] means the Shipping Act, 1916 as amended, 46 U.S.C. app. 801 *et seq.*

(b) *"Common carrier"* means any common carrier by water as defined in section 3 of the Shipping Act of 1984 or in the Shipping Act, 1916, including a conference of such carriers.

(c) *"Environmental Impact"* means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) *"Potential Action"* means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) *"Proposed Action"* means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) *"Environmental Assessment"* means a concise document that serves to "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9).

(g) *"Recyclable"* means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

(h) *"Shipping Act of 1984"* means the Shipping Act of 1984, (46 U.S.C. app. 1701–1720).

(i) *"Marine Terminal Operator"* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier.

§ 504.3 General information.

(a) All comments submitted pursuant to this Part shall be addressed to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

(b) A list of Commission actions for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (telephone [202] 523–5835.

§ 504.4 Categorical exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment because they are purely ministerial actions or because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. The following Commission actions, and rulemakings related thereto, are therefore excluded:

(1) Issuance, modification, denial and revocation of Ocean Freight Forwarder licenses.

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR Part 540;

(3) [Reserved]

(4) Promulgation of procedural rules pursuant to 46 CFR Part 502;

(5) Acceptance or rejection of tariff filings in foreign and domestic commerce;

(6) Consideration of special permission applications filed pursuant to 46 CFR Parts 550 or 580.

(7) Receipt of terminal tariffs pursuant to 46 CFR Part 515.

(8) Suspension of and/or decision to investigate tariff schedules pursuant to section 3 of the Intercoastal Shipping Act, 1933.

(9) Consideration of amendments to agreements filed pursuant to section 15 of the Shipping Act, 1916 or section 5 of the Shipping Act of 1984, which do not increase the authority set forth in the effective agreement.

(10) Consideration of agreements between common carriers which solely affect intraconference or inter-rate agreement relationships or pertain to administrative matters of conferences or rate agreements.

(11) Consideration of agreements between common carriers to discuss, propose or plan future action, the implementation of which requires filing a further agreement.

(12) Consideration of exclusive or non-exclusive equipment interchange of husbanding agreements.

(13) Receipt of non-exclusive transshipment agreements.

(14) Action relating to collective bargaining agreements.

(15) Action pursuant to section 9 of the Shipping Act of 1984 concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations.

(16) Receipt of self-policing reports or shipper requests and complaints.

(17) Consideration of financial reports prepared by common carriers in the domestic offshore trades.

(18) Consideration of actions solely affecting the environment of a foreign country.

(19) Action taken on special docket applications pursuant to 46 CFR 502.92.

(20) Consideration of matters related solely to the issue of Commission jurisdiction.

(21) Investigations conducted pursuant to 46 CFR Part 555.

(22) Investigator and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act, 1916 or the Shipping Act of 1984.

(23) [Reserved]

(24) Action regarding access to public information pursuant to 46 CFR Part 503.

(25) Action regarding receipt and retention of minutes of conference meetings.

(26) Administrative procurements (general supplies).

(27) Contracts for personal services.

(28) Personnel actions.

(29) Requests for appropriations.

(30) Consideration of all agreements involving marine terminal facilities and/or services except those requiring substantial levels of construction, dredging, land-fill, energy usage and other activities which may have a significant environmental effect.

(31) Consideration of agreements regulating employee wages, hours of work, working conditions or labor exchanges.

(32) Consideration of general agency agreements involving ministerial duties of a common carrier such as internal management, cargo solicitation, booking of cargo, or preparation of documents.

(33) Consideration of agreements pertaining to credit rules.

(34) Consideration of agreements involving performance bonds to a conference from a conference member guaranteeing compliance by the member with the rules and regulations of the conference.

(35) Consideration of agreements between members of two or more conferences or other rate-fixing agreements to discuss and agree upon common self-policing systems and cargo inspection services.

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Commission's Office of Environmental Analysis (OEA), explain in detail their reasons. The OEA shall review these submissions and determine, not later than ten (10) days after receipt, whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within ten (10) days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to § 504.5.

§ 504.5 Environmental assessments.

(a) Every Commission action not specifically excluded under § 504.4 shall be subject to an environmental assessment.

(b) The OEA may publish in the **Federal Register** a notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting writting comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the **Federal Register**.

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, the OEA determines that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the **Federal Register**. This document shall include

the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4 will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the **Federal Register**. The Commission shall review the petitions and either deny them or order the OEA to prepare an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared by the OEA when the environmental assessment indicates that a potential or proposed action to may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the **Federal Register**.

(3) The major decision points in the EIS process are:

(i) the issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ); and

(ii) the issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft environmental impact statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR Part 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. There will be no fee charged to such parties. One copy per person will also be provided to interested persons at their request. The fee charged such persons shall be that provided in § 503.43 of this chapter.

(3) Comments on the DEIS must be received by the Commission within ten (10) days of the date the Environmental Protection Agency (EIS) publishes in the **Federal Register** notice that the DEIS was filed with it. Sixteen copies shall be submitted as provided in § 504.3(a). Comments shall be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to ten (10) days if good cause is shown.

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, the OEA will prepare a final environmental impact statement (FEIS) pursuant to 40 CFR Part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in paragraph (b)(2) of this section.

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) For any Commission action which has been assigned to an ALJ for evidentiary hearing:

(i) The FEIS shall be submitted prior to the close of the record, and

(ii) The ALJ shall consider the environmental impacts and alternatives contained in the FEIS in preparing the initial decision.

(4)(i) For all proposed Commission actions, any party may, by petition to the Commission within ten (10) days following EPA's notice in the **Federal Register**, assert that the FEIS contains a substantial and material error of fact which can only be properly resolved by conducting an evidentiary hearing, and expressly request that such a hearing be held. Other parties may submit replies to the petition within ten (10) days of its receipt.

(ii) The Commission may delineate the issue(s) and refer them to an ALJ for expedited resolution or may elect to refer the petition to an ALJ for consideration.

(iii) The ALJ shall make findings of fact on the issue(s) and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(iv) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

§ 504.8 Record of decision.

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

§ 504.9 Information required by the Commission.

(a) Upon request of OEA, a person filing a complaint, protest, petition or agreement requesting Commission action shall submit to OEA, no later than ten (10) days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment, if such requested action will:

(1) Alter cargo routing patterns between ports or change modes of transportation;

(2) Change rates or services for recyclables;

(3) Change the type, capacity or number of vessels employed in a specific trade; or

(4) Alter terminal or port facilities.

(b) The statement submitted shall, to the fullest extent possible, include:

(1) The probable impact of the requested Commission action on the environment (*e.g.*, the use of energy or natural resources, the effect on air, noise, or water pollution), compared to the environmental impact created by existing uses in the area affected by it;

(2) Any adverse environmental effects which cannot be avoided if the Commission were to take or adopt the requested action; and

(3) Any alternatives to the requested Commission action.

(c) If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the OEA for informed assistance in preparing this statement. The OEA shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(d) In all cases, the OEA may request every common carrier by water, or marine terminal operator, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within ten (10) days of such request, all material information necessary to comply with NEPA and this part. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 21 of

the Shipping Act or section 15 of the Shipping Act of 1984.

§ 504.10 Time constraints on final administrative actions.

No decision on a proposed action shall be made or recorded by the Commission until the later of the following dates unless reduced pursuant to 40 CFR 1506.10(d), or unless required by a statutorily-prescribed deadline on the Commission action:

(a) Forty (40) days after EPA's publication of the notice described in § 504.7(b) for a DEIS; or

(b) Ten (10) days after publication of EPA's notice for an FEIS.

§ 504.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
504.4 through 504.7	3072-0035
504.9	3072-0035.

PART 505—COMPROMISE, ASSESSMENT, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

Sec.

Authority: 5 U.S.C. 552, 553, secs. 32 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 831 and 841a); secs. 10, 11, 13, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1710, 1712, and 1716.)

§ 505.1 Purpose and scope.

The purpose of this part is to implement the statutory provisions of section 32 of the Shipping Act, 1916, and section 13 of the Shipping Act of 1984, by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act of 1984, and/or any order, rule or regulation (except for procedural rules and regulations contained in Part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

§ 505.2 Definitions.

For the purposes of this part:

(a) "*Assessment*" means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) "*Commission*" means the Federal Maritime Commission.

(c) "*Compromise*" means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal, docketed proceeding.

(d) "*Person*" includes individuals, corporation, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(e) "*Respondent*" means any person charged with a violation.

(f) "*Settlement*" means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(g) "*Violation*" includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; and/or any order, rule or regulation (except for procedural rules and regulations contained in Part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, or the Shipping Act of 1984.

(h) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class. The word "and" includes "or", except where specifically stated or where the context requires otherwise.

§ 505.3 Assessment of civil penalties: procedures; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for a hearing under section 22 of the Shipping Act, 1916, or sections 11 and 13 of the Shipping Act of 1984. The proceeding, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in Part 502 of this Chapter. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. A proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 505.4(e).

§ 505.4 Compromise of penalties: relation to assessment proceedings.

(a) *Scope.* Except in pending assessment proceedings provided for in § 505.3 the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except where circumstances render it unnecessary, send a registered or certified demand letter to the respondent describing specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged

violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The demand shall also include the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a demand provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 505.3(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When the penalty is compromised, such compromise will be made conditional upon the full payment of the compromised amount upon such terms and conditions as may be allowed.

(2) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such a compromise agreement is set forth as Appendix A to this part.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a copy of the executed agreement shall be furnished to the respondent.

(3) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this part is delegated to the Director, Bureau of Hearing Counsel.

§ 505.5 Payment of penalty: method; default.

(a) *Method.* Payment of penalties by the respondent shall be made by:

(1) A bank cashier's check or other instrument acceptable to the Commission;

(2) Regular installments, with interest where appropriate, by check or other instrument acceptable to the Commission after the execution of a promissory note containing a confess-judgment agreement (Appendix B); or,

(3) A combination of the above alternatives.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 505.3, or compromised and agreed to under § 505.4, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such a defaulting respondent is a licensed freight forwarder, such a default may also be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

Note.—This part does not contain any collection of information requests or requirements within the meaning of the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Appendix A.—Example of Compromise Agreement To Be Used Under 46 CFR 505.4.

Compromise Agreement

FMC File No. ———

This Agreement is entered into between:

(1) The Federal Maritime Commission and,

(2) ———— hereinafter referred to as respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against respondent for the recovery of civil penalties provided under the ———— Act ———, for ——— alleged violation(s) of Section(s) ———,

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by respondent to wit:

_____

—. _____

Whereas, Section ——— of the ———— Act ——— authorizes the Commission to collect and compromise civil penalties arising from the alleged violation(s) set forth and described above; and,

Whereas, the respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourage and prevent these practices by respondent or its officers, employees and agents.

Now Therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between (date) and (date), the undersigned respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $———, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from respondent arising from the alleged violations set forth and described herein, that have been disclosed by respondent to the Commission and that occurred between (date) and (date).

2. The undersigned voluntarily signs this instrument and states that no promises or representations have been made to the respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this agreement is not to be construed as an admission of guilt by undersigned respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations, the parties hereby waive application of such procedures.

By _____

Title _____

Date _____

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission:

_____

(Hearing Counsel)

_____

Director, Bureau of Hearing Counsel

Date _____

Appendix B—Example of Promissory Note To Be Used Under 46 CFR 505.5

Promissory Note Containing Agreement for Judgment

FMC File No. ———

For valued received, ———— promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $——— ($——) to be paid at the offices of the Commission in Washington, D.C., by bank cashier's or certified check in the following installments:

$——— ($——) within — months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel;

$——— ($——) within — months of execution of the agreement;

[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of this execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [—— percent (——%) per annum.]

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, (Respondent) does hereby authorize and empower any U.S. attorney, any of its assistants or any attorney of any court of record, Federal or State, to appear for him or her, and to enter and confess judgment against (Respondent) for the entire unpaid principal amount of this Promissory Note, together with interest, in any court of record, Federal or State; to waive the issuance and service of process upon (Respondent) in any suit on this Promissory Note; to waive any venue requirement in such suit; to release all errors which may intervene in entering such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

(Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, provided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayment.

By: ———

Title: ———

Date: ———

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-29100 Filed 11-5-84; 8:45 am]

BILLING CODE 6730-01-M

federal register

Tuesday
November 6, 1984

PART III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 91

Rotorcraft Regulatory Review Program; Amendment No. 2; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 91

[Docket No. 23266; Amdts. 1-32, 27-21, 29-24, and 91-185]

Rotorcraft Regulatory Review Program; Amendment No. 2

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts new airworthiness standards for type certification of normal and transport category rotorcraft. New Standards are necessary because of the phenomenal growth of the rotorcraft industry and the recognition by both government and industry that the updated standards are needed. This rule changes those sections of Parts 1, 27, 29, and 91, of the Federal Aviation Regulations which apply to rotorcraft flight characteristics, systems, and equipment.

EFFECTIVE DATE: December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Jim S. Honaker, Regulations Program Management (ASW-111), Aircraft Certification Division, mailing address: P.O. Box 1689, Fort Worth, Texas 76101, or office location at 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 877-2552.

SUPPLEMENTARY INFORMATION: These amendments are the second in a series of amendments to be issued as a part of the Rotorcraft Regulatory Review Program. The first of the series of amendments of the Rotorcraft Regulatory Review Program addressed applicability, instrument flight rules (IFR) certification and icing certification standards and was published in the Federal Register on January 31, 1983 (48 FR 4374).

These amendments are based on Notice of Proposed Rulemaking No. 82-12 published in the Federal Register on August 26, 1982 (47 FR 37806). All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and reasons for their adoption are the same as those contained in Notice 82-12, and, unless otherwise indicated, the proposals contained in the notice have been adopted without change.

Discussion of Comments

The following discussions are keyed to like-numbered proposals in Notice 82-12 and are presented in the same order as the corresponding amendments found in the rules portion of this document.

Proposal 2-1. Three comments were received to this proposal, all of which primarily agreed but raised areas of concern. One commenter recommends deleting the last sentence of the § 1.1 proposed definitions of climbout speed and takeoff safety speed. That sentence, in both definitions, states that these airspeeds are determined from the Rotorcraft Flight Manual. The commenter is correct in that this location of airspeed information is not appropriate in a definition. The location of airspeed information is also inappropriate for a certification applicant that determines these airspeeds by engineering actions which are used to develop the Rotorcraft Flight Manual. Accordingly, the last sentences in these proposed definitions are deleted.

The same commenter and a second commenter suggest that further changes appear necessary to clarify and differentiate between the definitions and abbreviations in Part 1 pertaining to fixed-wing aircraft and helicopters. Such a change, however, was recognized by the commenters as being beyond the scope of the notice.

A third commenter suggests that, as worded, takeoff safety speed will be applicable to fixed-wing aircraft and a decision on its inclusion should be withheld until fixed-wing operators have commented. All these commenters have some association with fixed-wing aircraft and offered no comments on conflict with aircraft usage. The FAA concludes that the definition is compatible with all aircraft. The definitions of this proposal are adopted with the changes noted.

Proposal 2-2. No comments were received on the proposal to add the definition of V_{TOSS} to § 1.2 except the recommendation for further clarification between rotorcraft and airplane definitions and abbreviations of Part 1 noted in Proposal 2-1. The proposed amendment is adopted without change.

Proposal 2-3. No comments were received on this proposal.

Proposal 2-4. One commenter recommends deleting the phrase "prior to takeoff" from the proposed addition of § 27.45(f) concerning engine power determination. A second commenter made the same recommendation for Proposal 2-33.

Determining engine power available before being committed to flight has long been a problem that helicopter pilots have faced. During normal operations, applying full power results in the helicopter becoming airborne and climbing. Even applying full power to only one engine on a multiengine helicopter will result in it becoming light on the landing gear, essentially flying, or actually airborne if operating at a light weight. Shortly after becoming airborne is not the proper time for the pilot to discover that there is less power available than anticipated.

The first commenter states that the proposed change does not recognize advances in technology which may indicate engine condition to the pilot before takeoff and that a power check before each flight is time-consuming, unnecessary, and economically punishing. The second commenter states that engine characteristics are such that meaningful checks must be completed at or near such [full power] ratings which would probably result in single-engine liftoff.

As noted in the explanation of Proposal 2-33, a preflight power-assurance check procedure is required by special conditions for all current transport category turbine-powered rotorcraft. Compliance typically involves flight manual instructions for partial power checks in addition to specifications for validating limit power during production acceptance and engine maintenance or replacement activities. Similar methods of compliance are suitable under the proposed rule. The FAA recognizes the deficiencies of such a pretakeoff check as stated by the second commenter but considers this procedure significantly safer than having no means to evaluate engine operation.

The second commenter suggests that a system of engine condition monitoring carried out at significantly high power plus a preflight function check would satisfy this requirement. The FAA agrees provided the commenter's meaning of "preflight functional check" is essentially the same as "a means must be provided to permit the pilot to determine prior to takeoff." The proposal does not preclude the use of advanced technology for a system such as automatic monitoring of engine condition with appropriate warning to the pilot.

A third commenter states that there is a need to simplify procedures and recommends use of a calculator, either mechanical or electronic, as an

improvement over charts. Specifying such a means to make a power check would inhibit innovation. The proposed amendment is adopted without change.

Proposal 2–5. The only comment received agrees with the proposal.

Proposal 2–6. One commenter agrees with the proposal to change § 27.79 to permit determination of the height-velocity envelope at the highest weight allowing hovering out-of-ground effect. A second commenter recommends that the second sentence of the proposal be changed for helicopters such that the weight need not exceed the highest weight allowing hovering out-of-ground effect at altitudes above sea level. This commenter states that his proposed change would be in agreement with the change proposed (and subsequently accepted) for § 29.79 in Notice 80–25 (45 FR 83424), the first notice of this Rotorcraft Regulatory Review Program. However, that notice states that the height-velocity demonstration weight must be the maximum approved for takeoff and landing but need not exceed the weight allowing hovering out-of-ground effect. The new § 29.79(a)(2) establishes demonstration weights at or near the maximum operating weight. The commenter's suggestion does not establish a minimum demonstration weight, that is, minimum weight does not exceed the highest weight allowing hovering out-of-ground effect. Accordingly, the amendment is adopted without change.

Proposal 2–7. One commenter agrees with the proposal to simplify § 27.141 and add temperature accountability into the flight characteristics requirements. A second commenter questions the need to demonstrate all flight characteristics at all allowable temperatures and requests that the basis for the need be clearly addressed in Advisory Circular 29–2, "Certification of Transport Category Rotorcraft," and in the comparable document that is to be written for Part 27. This information will be included in the advisory circulars. The FAA has found that some advanced technology rotor systems are affected by temperature variations in some areas of stability and control, vibration, and the more well-known rotor blade tip mach number effects. The amendment is adopted as proposed.

Proposal 2–8. Only one comment was received, and that comment agrees with the proposal.

Proposal 2–9. Only one comment was received, and that comment agrees with the proposal.

Proposal 2–10. One comment on the proposed § 27.161 trim control requirements recommends that the control forces must be trimmable only to "approximately zero" rather than "zero." The proposal did not address control force but only adds collective trim control to the present requirement for longitudinal and lateral trim controls. The commenter states that for many years helicopters have operated successfully without "zero" trimming and that the small deviations from zero have been taken care of by small amounts of friction.

The commenter's suggestion is the same as one received for the Rotorcraft Regulatory Review conference (conference Proposal 35) and was discussed in the Appendix to Notice 82–12. The FAA finds that the reasons given in the Appendix to Notice 82–12 for requiring zero trim are still valid.

A second commenter agrees with the proposal, but wants the capability of disabling the trim system at the pilot's option for takeoff, landing, and hovering. This change is beyond the scope of the notice. The amendment is adopted as proposed.

Proposals 2–11 and 2–12. One commenter recommends deleting proposed §§ 27.173(c) and 27.175(d), both of which refer to static longitudinal stability in a hover. The commenter states that hovering is a hands-on flight condition requiring continuous movement of all four controls. The commenter argued that requiring that the pilot's hand be in a certain range of positions does not result in an increased level of safety. The commenter also states that the general paragraph on controllability and maneuverability provides adequate safety requirements.

The proposed changes concerning the hover flight regime serve only to clarify the present rules. Existing stability and control literature shows the unsafe flight conditions resulting from excessive negative stability and the limits of negative stability that allow controlled, but not necessarily acceptable, flight. The FAA agrees that hovering presents special considerations. Deleting the paragraphs, as the commenter suggests, would leave the hover flight condition addressed by the most general of requirements. This could lead to a confusion of interpretations of hover requirements such as including requirements intended only for level forward flight. To meet the positive stability requirements of forward flight during hover would be extremely burdensome, perhaps not even possible.

A second commenter agrees with both proposals as written. These amendments are adopted as proposed.

Proposal 2–13. One commenter agrees with the proposal to add a new § 27.177 requiring positive static directional stability. A second commenter recommends deleting the last sentence, which requires sufficient pilot cues of sideslip to assure safe operations, because it is unnecessary and introduces a qualitative issue which could lead to misinterpretation and misapplication of the intended rule.

While the FAA does not agree that the last sentence should be deleted, it has been changed to read "Sufficient cues must accompany sideslip to alert the pilot when approaching sideslip limits." This will more clearly state the intent of the rule. The alternative to this somewhat broad statement would be to identify all possible cues which would result in unnecessary complexity.

A third commenter recommends that instead of requiring positive static directional stability, the rule should only require that there be no negative static directional stability perceptible to the pilot through the directional pedals. Positive directional stability is necessary to ensure minimum satisfactory stability and control characteristics and to inhibit exceeding sideslip limits. This suggestion could result in considerable misinterpretation and misapplication as to how much negative stability is perceptible to which pilot.

The third commenter also states that the proposed requirement to demonstrate static directional stability will increase certification test time by 5 hours. Review by the FAA indicates that the wording of the proposal, with reference to the conditions for demonstration of static longitudinal stability, could be misinterpreted to require excessive (5 hours) testing. The amendment is reworded to specify testing at the trim airspeeds used to demonstrate static longitudinal stability in climb and level flight (and in autorotation for Part 29) tests. This will permit the directional stability tests to be accomplished on the same flights as static longitudinal stability tests with an increase of test time of less than 1 hour.

The amendment is adopted with the noted changes to clarify the intent of the proposal.

Proposal 2–14. One commenter agrees with the proposal to add a new § 27.610 specifying lightning protection requirements. A second commenter suggests limiting the lightning protection requirement to those rotorcraft being certificated for IFR flight. This commenter states that in 13 million VFR flight hours of one manufacturer's fleet, only one non-severe lightning strike was reported and that a statement in the Rotorcraft Flight Manual to avoid flying near storms or vertical clouds would be sufficient. This commenter also states

that meeting the requirement would be very expensive and complex but he fails to provide any details or other indication of cost or magnitude. Research by numerous technical groups studying lightning has disclosed that strikes occur in both VFR and IFR conditions. These studies have also shown that unless thunderstorm turbulence, hail, and rain are circumnavigated by well over 25 miles, an occasional lightning strike will occur. There are many reports of lightning strikes occurring to aircraft operating between clouds or in areas where no thunderstorms were forecast, and a few pilots have reported "bolts from the blue."

The FAA is aware of one U.S. manufactured helicopter series that has been struck by lightning four times since certification in 1980. This particular helicopter series is very limited in number, but most operations have been in a more than normally hostile weather environment. Only minor damage resulted from the lightning strikes because the helicopter manufacturer voluntarily followed good design practices for lightning protection although the applicable airworthiness regulation had no specific lightning protection requirement. In a recent study including in-flight strike data collected over an eight year period, 36 percent of the recorded strikes occurred below 10,000 feet man sea level (MSL) altitude, and 87 percent of the recorded strikes occurred below 16,000 feet MSL. Since rotorcraft are not pressurized, are rarely equipped with oxygen, and operation at the higher altitudes is inefficient, most operations occur below 10,000 feet MSL and very rarely above 16,000 feet MSL.

The proposed change uses the same words as those used for large airplanes in Part 25. Many airplanes have been struck by lightning, but only a very few have resulted in catastrophic failure. Since the wording of the proposed change is general in nature and there are no specific provisions uniquely applicable to fixed-wing aircraft, the FAA concludes extension of the standard to rotorcraft will provide rotorcraft occupants the same degree of safety from lightning as provided fixed-wing aircraft occupants.

The FAA forecasts that by the year 2000 the rotorcraft fleet size will nearly double to approximately 20,000 units. In addition, the trend is going towards more complex, fully instrument flight equipped rotorcraft that will be conducting more operations in adverse weather conditions, including icing, where lightning strikes are more likely to occur.

Application of new technology to rotorcraft is also a factor in consideration of the need for protection against lightning. There is an increasing trend toward the use of composite materials in the rotorcraft structure. Since these materials are nonconductive, additional precautions must be taken to assure proper lightning current paths to retain structural integrity and allow protection of installed systems. Programmable, microprocessor-based digital equipment is rapidly being applied in critical functions such as electronic fuel controls and Electronic Flight Instrument Systems (EFIS). The EFIS systems have complete instrument panel displays that are of the cathode ray type, driven by digital computers. Many present generation automatic flight control systems are digital based, and further application of digital computer technology to critical flight controls is anticipated. If proper design precautions are not taken in the basic rotorcraft and system installations, computer memories can be lost, programs can be upset, or complete computer destruction can occur with a lightning strike.

Although Notice 82–12 presented no economic estimate for this change and specifically requested such data, none was received—except the second commenter's statement that it would be "very expensive." However, as noted in Table 1 of the economic summary, an FAA, NASA, and DOD task force is engaged in a lightning research effort. The FAA plans to pass the results of that effort on to the public via advisory circular material, thus minimizing each applicant's lightning research costs.

In view of the increased criticality of structure and systems subject to lightning damage, plus the increase in fleet size and operations in environments where lightning strikes frequently occur, the FAA finds it necessary to provide these standards. Therefore the amendment is adopted as proposed.

Proposal 2–15. One commenter suggests that "any failure" as used in proposed § 27.672(a) be clarified to exclude mechanical failures. The FAA disagrees as §§ 27.695(c) and 29.695(c) require that for power-boost and power-operated control systems, "The failure of mechanical parts (such as piston rods and links), and the jamming of the power cylinders, must be considered unless they are extremely improbable."

FAA review noted that the reference to § 29.671 should be § 27.671; this is corrected. The proposed amendment is adopted with the corrected reference.

Proposal 2–16. Only one comment was received, and it agrees with this proposal.

Proposal 2–17. One commenter agrees with the proposal to add a new § 27.729 concerning landing gear retracting mechanisms but states that with existing systems where "landing-gear-not-down-warning" is based only on airspeed, there is a problem of continuous warning when operating with Category B external loads at slow airspeeds and with the landing gear retracted. The proposal requires a manual shutoff capability which will enable the crew to silence the aural warning and continue such external-load Category B operations. Several rotorcraft have an airspeed activated system and the FAA has found that this is satisfactory. The amendment is adopted as proposed.

Proposal 2–18. Only one comment was received and it agrees with this proposal.

Proposal 2–19. This is a parallel proposal to Proposal 2–52. See that proposal for comments, analysis, and changes.

Proposal 2–20. This proposal changes the title of § 27.785 and significantly increases the detail of seats, berths, safety belts, and harnesses requirements. One commenter suggests that paragraph (b) be replaced by a requirement that each occupant must be protected from head and upper torso injury by a safety belt and shoulder harness. This commenter states that the shoulder harness increases an occupant's tolerance to vertical impact loads without injury from about 4g to 25g. However, no cost data for this requirement were submitted and the FAA estimates that the cost would be significant. The FAA is participating in several studies and reviews of crash results and requirements. The proposed amendment aligns the rule with airplane rules and the limited conclusions available to date. It would be inappropriate to accept the suggested change until more data, especially cost, are available from these or other studies.

A second commenter suggests that a third option be listed in paragraph (b)(2) indicating that a safety belt plus a shoulder harness is acceptable and that the proposed (b)(2)(ii) be prefaced by the phrase, "for aft-facing seats."

The latter portion of this suggestion would appear to eliminate consideration for side-facing seats, while the proposal, without the "aft-facing seat" phrase, was intended to include seats with any orientation.

The first portion of this commenter's suggestion points out that a combination

of safety belt and shoulder harness is an acceptable method. This proposed change helps clarify the amendment and is included in paragraph (b)(2).

A third commenter notes that the National Transportation Safety Board (NTSB) has recommended for many years that shoulder harnesses be installed in light airplanes at all seat locations and sees no difference in the basic survivability issues between airplanes and rotorcraft. This commenter concludes that sufficient data, including U.S Army crashworthiness data dating back to 1960, are available to justify a requirement for a shoulder harness at each seat location in normal category rotorcraft. A fourth commenter states that every effort should be made to take advantage of the research and development conducted during the last several years to require built-in crashworthiness. As noted, most of the crashworthiness studies have been accomplished by and for the military, which has different design standards than civil rotorcraft. Using only military data to establish civil requirements could very well result in requirements that would be excessively and possibly prohibitively expensive in initial and operating costs. Further changes will be deferred until completion of the FAA crashworthiness program. The amendment is adopted with the one change discussed.

Proposal 2–21. Only one comment was received. It agrees with this proposal.

Proposal 2–22. One commenter agrees with the proposal to relax equipment, systems, and installation design requirements for single engine rotorcraft and to require consideration of lightning strikes on rotorcraft.

Two additional commenters suggest that proposed § 27.1309(d) include a reference to § 27.610, to agree with the § 29.1309. This reference is added.

A fourth commenter says he does not understand the different criteria based on the number of engines. In the present rules, the requirements in § 27.1309 (a) and (b) are identical to § 29.1309 (a) and (b), which is contrary to the concept of less strict requirements in Part 27, where applicable. The proposed change relieves the requirements of Part 27 by considering only probable failures and by recognizing the different operational capabilities and levels of probable safety between single-engine and multiengine rotorcraft after a probable failure. The proposed amendment is adopted with the reference to § 27.610 added.

Proposal 2–23. This proposal adds a new § 27.1329 describing automatic pilot system requirements. One comment suggests that "system" be replaced with "automatic pilot" to be consistent with § 29.1329(e). This will also be consistent with §§ 23.1329(e) and 25.1329(g). The FAA concurs and the proposal is adopted with this change.

Proposal 2–24. Only one comment was received and that comment agrees with the proposal.

Proposal 2–25. Only one comment was received and that comment agrees with this proposal.

Proposal 2–26. One commenter recommends adding the phrase "except for the weight demonstrated according to § 27.79" to indicate more clearly that height-velocity data are in no way limiting to the proposed change to delete § 27.1519 (b) and the (a) designation of § 27.1519(a).

The explanation in the notice gives considerable detail about changes being made to the rule to clarify that height-velocity data are not limitations. Also similar wording has been in effect for many years without causing problems. Therefore, the commenter's exception phrase is not considered necessary. A second commenter agrees with the proposal. The amendment is adopted as proposed.

Proposal 2–27. Only one comment was received and it agrees with this proposal.

Proposal 2–28. One commenter agrees with the proposal concerning § 27.1555, Control markings. A second commenter suggests that proposed paragraph (e), which would require that the maximum landing gear operating speed be plainly marked close to the landing gear control, be deleted as unnecessary. This commenter states that all pilots know landing gear operating speeds without spoonfeeding them with unwarranted placards and instructions. The FAA does not agree.

Retractable landing gear is still not common in small helicopters. A pilot that flies rotorcraft with and without retractable gear may know and review the operating speeds but landing gear speeds are not speeds that stand out during a review. Therefore, a placard reminder seems prudent.

The FAA has reviewed the proposal to require the marking to be located close to the landing gear control. While displaying the speed near the control has several advantages, many pilots prefer using one placard for several airspeed limits. A one-placard concept allows placing this information where it is consolidated and clearly available to the pilot without disrupting good instrument or control placement. Therefore, this proposal, as adopted, requires the maximum landing gear operating speed to be displayed in clear view of the pilot to permit the one-placard concept.

Proposal 2–29. One commenter agrees with the proposal to shorten the limitation placard wording required by § 27.1559. A second commenter suggests that the required placard state, "Refer to the approved Rotorcraft Flight Manual for kinds of approved operations." According to the commenter, this would relieve the requirement for a drawing change, a new decal, and FAA approval of these each time there is a change in approved operations.

Normally, this would be a very minor part of the effort to obtain FAA approval of a different kind of operation. One manufacturer sends Rotorcraft Flight Manual Supplements to all owners when a modification kit is FAA approved; however, each rotorcraft is not approved for the new kind of operation until the kit is installed, so a pilot looking at one of these Rotorcraft Flight Manuals still would not know if the helicopter is approved for that type operation. The limitation placard as proposed is the most positive method of readily identifying the kinds of operations that are approved for a specific rotorcraft. The amendment is adopted as proposed.

Proposal 2–30. One commenter agrees with the proposal. A second commenter recommends that the proposed § 27.1585(a) (1) and (2) and the lead-in sentence to these subdivisions be deleted. This commenter states that the phrase "other information" in paragraph (a), concerning operating procedures, adequately covers the requirement to identify takeoff and landing surfaces used in the tests and the appropriate airspeeds. The commenter states that the requirement to identify takeoff and landing surface and associated airspeeds is not the only type of "other information" and should be contained in guidance information rather than the rule. While the kind of takeoff and landing surface and associated airspeeds are not the only type of "other information," these are important and specific enough to be included in the rule as a requirement for all rotorcraft. The amendment is adopted as proposed.

Proposal 2–31. One commenter agrees with the proposal. A second commenter suggests statements in § 27.1587 to prevent including performance information which exceeds operating limits and a requirement to show the maximum demonstrated wind for starting and stopping the rotors. This commenter also suggests that the minimum demonstration wind for starting and stopping the rotors be at least 17 knots to agree with

controllability and maneuverability requirements. These suggestions were originally conference Proposal 144 and were removed from further consideration as noted in the appendix of Notice 82–12 as being an unnecessary burden for small rotorcraft. The rationale in the appendix explanation is still valid. The amendment is adopted as proposed.

Proposal 2–32. No comments were received on this proposal.

Proposal 2–33. Two commenters suggest that the word "limiting" be deleted from the proposed § 29.45(c)(2) as it relates to power absorbed by the accessories and services. The second of these commenters recommends that "and approved" be added to the end of this proposal. Both commenters state that including the word "limiting" will cause confusion since the intent of the change is to allow power determination with the accessories at a value less than the limit value. As an example, an applicant may select a generator that has a "limit" rating of 300 amperes but the maximum load possible for this specific rotorcraft would be 200 amperes; therefore, the power absorbed by this generator load would be based on 200 rather than 300 amperes. Adding equipment to this rotorcraft that could impose a load greater than the 200 amperes would require meeting all the certification requirements, including power determination, as if a larger generator were installed. Both commenters suggest that guidance material should be used to clarify power determination. The FAA agrees with these comments and § 29.45(c)(2) is changed by deleting "limiting" and adding "and approved".

The same two commenters also recommend that the phrase "prior to takeoff" be deleted in the proposed § 29.45(f). A third commenter suggests simplifying the procedure with a mechanical or electronic computer. The FAA's response to these comments is contained in the discussion of Proposal 2–4. This portion of the amendment is adopted as proposed.

Proposal 2–34. One commenter agrees with the proposal. A second commenter notes that as the proposal is worded, a critical decision point (CDP) and acceleration to V_{TOSS} below 35 feet or a descent from the CDP to below 35 feet while accelerating to V_{TOSS} would not be permitted. This is not the intent of the proposal. This commenter suggests the wording ". . . takeoff safety speed and a height of 35 feet above the ground or greater and the climbout must be made . . . ." This wording corrects the proposal to that intended and § 29.59 is revised accordingly.

Proposals 2–35 and 2–36. Only one commenter responded to these proposals, and his comments agree with both proposals.

Proposal 2–37. The comments offered on Proposal 2–7 were also provided on the proposal to add temperature considerations to § 29.141. See explanation for Proposal 2–7. The amendment is adopted as proposed.

Proposal 2–38. Only one comment was received, and it agrees with this proposal.

Proposal 2–39. Only one comment was received and it agrees with the proposal.

Proposal 2–40. One commenter suggests that a directional trim requirement be added to § 29.161. As stated in Proposal 2–10 explanation, directional trim was considered and deemed not required. The commenter does not present justification that had not been previously considered. The commenter also suggests requiring trimming of collective forces to zero in a hover. This was also considered and, as noted in Notice 82–12 (Proposal 2–10), hovering flight is considered a hands-on condition for which a trim requirement is not warranted.

The same commenter further suggests that cyclic and directional control forces of zero in a hover are not required, but some maximum value, such as 5 pounds, should be required for each axis. This is beyond the scope of the notice.

A second commenter suggests requiring the capability to disarm the trim system. This also is beyond the scope of the notice. The amendment is adopted as proposed.

Proposals 2–41 and 2–42. Both of these proposals concern static longitudinal stability in a hover as addressed in § 29.173 and § 29.175. One commenter agrees with both. A second commenter had the same comments as for Proposals 2–11 and 2–12, proposals for comparable requirements for Part 27. Refer to Proposals 2–11 and 2–12 for explanation. In Proposal 2–41, reference to § 27.175 (a) and (d) is corrected to § 29.175 (a) and (d). The amendment is adopted with the noted corrections.

Proposal 2–43. The same comments as for Proposal 2–13 were received for this proposal adding static directional stability requirements in a new § 29.177. See Proposal 2–13 for explanation; the same changes are made and the amendment adopted.

Proposal 2–44. One commenter agrees with the proposal for a new § 29.181 concerning dynamic stability for Category A rotorcraft. A second commenter suggests deleting the entire proposal because the FAA's claims are incorrect when stating that all recently certificated models have met this dynamic stability requirement and that it is less stringent than the fixed-wing requirement. This commenter states that some recently certificated rotorcraft may possess positive damping but most do not comply throughout the approved operating envelope. To meet this requirement, according to this commenter, some degree of added stability augmentation would be required at a significant increase in cost and complexity.

The proposal explanation includes considerable detail as to why this dynamic stability requirement is for Category A rotorcraft only, how it relates to the Category A concept, and how it is necessary as a backup standard for the Category A IFR stability augmentation failure condition. Recently certificated Category A rotorcraft have met this standard at airspeeds above climb speed which is the proposed requirement. All recently certificated Category A rotorcraft may not have met this standard throughout their approved operating envelope as this commenter incorrectly implies the requirement to be.

In comparing the proposed dynamic stability requirements with those of fixed-wing airplanes, this second commenter states that following a stability augmentation failure, § 25.672 requires an airplane to meet only the controllability and maneuverability standards, not the stability or other flight characteristics standards, while the proposed IFR requirements for Part 29 (Notice 80–25 [45 FR 83424; December 18, 1980], which have been adopted without change in this area) include the requirement to meet all the flight characteristics of Subpart B of Part 29. This difference in the requirements between Part 25 and Part 29 results in airplanes not being required to comply with the dynamic stability standards after a stability augmentation system failure, while including this proposal in the Subpart B of Part 29 will require the Category A rotorcraft to continue to meet the standard after a failure when seeking IFR certification. The commenter is correct in that for the IFR failure case, not only is the specific standard for dynamic stability more strict but flight characteristics standards, in general, are more strict. Justifications for the Part 29 IFR requirements are contained in Notice 80–25 and in the preamble of the final rule (48 FR 4374; January 31, 1983). However, Notice 82–12 proposes a new § 29.672 which reads essentially the same as § 25.672; so for the Part 29 VFR case, a stability augmentation system failure does not increase the standard

compared to Part 25. For VFR certification under Part 29, the proposed requirement for only positive damping is less stringent than the heavily damped requirement in Part 25. Accordingly, the amendment is adopted as proposed.

Proposal 2–45. This proposal establishes lightning protection requirements in a new § 29.610. See Proposal 2–14 for comments and explanation. The amendment is adopted as proposed.

Proposal 2–46. One commenter agrees with the proposal to add a new § 29.671(c), stating that it "could add appreciably to the cost of manufacture and maintenance; however, . . . the cost may be justified." This commenter also notes that future "fly-by-wire" helicopters will require ground testing such as proposed.

A second commenter suggests the proposal be deleted stating that it would not fulfill the objectives desired by the FAA, that control interference and rigging checks cannot be conducted on the flight line, and that the quality of maintenance is not relevant to airworthiness regulatory action. It is likely that only significant control interference or misrigging would be discovered on a preflight check and these should have been detected on maintenance inspections; however, foreign objects in the control system and some partial failures could be detected. The quality of maintenance may not be relevant to type certification, but affording the pilot the capability to assure (within limits) that the aircraft is airworthy certainly is relevant. The recent trend towards use of composite rotor hubs with fewer hinges further restricts the allowable control inputs that can be made with the rotors turning and the rotorcraft on the ground. Therefore, unless some other alternative is provided, the pilot will have even less capability to determine airworthiness.

The second commenter further reviews the 13 accidents cited in the notice where it was stated that three might have been prevented by a method to check full control action before takeoff. This commenter states that none of these accidents would have been prevented by the proposal. This commenter cites one accident that occurred 3 to 4 miles from the departure point, and concludes that the proposed preflight check would not have been of merit. The same conclusion is reached in three other accidents where there was some period of flight before an accident. The FAA does not concur that a period of flight before an accident occurs proves that the proposed check is invalid. The critical control condition may not have been encountered until that point in the flight. It also should be noted that the six types of helicopters involved in these accidents were certificated in 1952, 1956, 1961, 1968, 1970, and 1976. This commenter concludes with the statement, "Thus, it appears that from Part 29 helicopter accident history, there is no justification to incorporate this NPRM." As explained in the notice, a few accidents "might" have been prevented. The available data are not sufficient for a positive conclusion either way. But there has been a sufficient number of control system failures and incidents to clearly indicate a problem area. In view of the catastrophic effects of a failure and the increasing complexity of control systems, improved preflight check capability is appropriate. Accordingly, the amendment is adopted as proposed.

Proposal 2–47. This is a parallel proposal to that contained in 2–15. See that proposal for explanation and analysis. A second commenter noted the typographical error that refers to § 29.67 which should be § 29.671; this is corrected and the amendment is adopted.

Proposal 2–48. Only one comment was received, and it agreed with the proposal.

Proposal 2–49. One commenter agrees with the proposal to revise § 29.729(f) and add a new § 29.729(g), but references his comment on Proposal 2–17. See the explanation for that proposal. The amendment is adopted as proposed.

Proposal 2–50. Only one comment was received, and it agrees with the proposal.

Proposal 2–51. One commenter agrees with the proposed change to § 29.771(b) to require consistency between pilot stations and states that the requirement should apply to Part 27 as well. This is beyond the scope of the notice. The amendment is adopted as proposed.

Proposal 2–52. One commenter agrees with the proposal to add a new § 29.779. A second commenter suggests that paragraph (a) should be worded, "Primary flight controls must operate . . ." stating that Proposal 2–48 defines primary controls as including the collective. A third commenter makes this same suggestion and adds a paragraph to state that other controls must operate forward or up to increase the related controlled parameter as it is related to the rotorcraft axis.

Including the word "primary" would exclude consideration of secondary controls. The third commenter's suggested paragraph would cover only a limited number of considerations that are best covered in guidance material.

A fourth commenter suggests that proposed paragraph (c) state that the normal landing gear control operate downward rather than just landing gear control, since emergency landing gear controls may require different actions. This suggestion is accepted and the amendment is adopted with this change.

Proposal 2–53. See explanation for Proposal 2–20. This amendment is adopted with the same change as identified for Proposal 2–20.

Proposal 2–54. No comments were received on the proposal to delete paragraphs (f) and (g) of § 29.811 and redesignate the remaining paragraphs. The proposal is adopted without change.

Proposal 2–55. One commenter agrees with the proposal. The FAA notes that the proposal was not clear in allowing the emergency lighting system to share common sources of illumination (bulbs) with the normal cabin lighting system provided the power supplies are independent. Therefore § 29.812(a) is revised as follows: "(a) A source of light with its power supply independent of the main lighting system must be installed to . . . ."

A second commenter suggests that the cockpit control device in proposed § 29.812(b) could have either "off," "on," and "armed" positions or "off" and a common "on/armed" positions. The control device in the cockpit needs an "on" position (sometimes referred to as "test") to allow the crew to preflight check the emergency lights and to turn on the emergency lights when the normal rotorcraft power is not interrupted. The FAA agrees that the wording of this paragraph could be improved; therefore, the second sentence of § 29.812(b) is revised as follows: "The cockpit control device must have an 'on,' 'off,' and 'armed' position so that when turned on at the cockpit or passenger compartment station or when armed at the cockpit station, the emergency lights will either illuminate or remain illuminated upon interruption of the rotorcraft's normal electric power."

A third commenter suggest that the exterior emergency lighting in proposed § 29.812(c) could be provided by internal or external sources with intensity measurements made with the normal exits open. The FAA concurs except the measurements would be made with only the emergency exits open. Therefore, the following is added: "The exterior emergency lighting may be provided by either interior or exterior sources with light intensity measurements made with the emergency exits open."

Further FAA review notes that the method of activating the exterior lighting

in § 29.812(c) is not stated. To correct this, proposed paragraph (c) will be reidentified as paragraph (b) and proposed paragraph (b) reidentified as paragraph (c). The first sentence of new paragraph (c) is revised to read: "Each light required by paragraph (a) or (b) of this section . . . ." The proposed amendment is adopted with the noted changes.

Proposal 2–56. Only one comment was received, and it agrees with the proposal.

Proposal 2–57. One commenter agrees with the proposal to add the requirement for a maximum allowable airspeed indicator and warning system for certain Category A rotorcraft in § 29.1303. A second commenter suggests that a radar altimeter should be mandatory for Part 29 helicopters and there should be criteria to establish maximum allowable vibration; these suggestions are beyond the scope of the notice.

A third commenter states that V_{NE} is defined as the never-exceed speed and that structural substantiations do not cover any intentional operation above V_{NE}, so that warning should operate at V_{NE} and above (with up to 5 knots below V_{NE} for production tolerance). This commenter suggests that establishing a normal operating speed limit, V_{NO}, below V_{NE} would solve the problem of nuisance operation of the warning at, or near, the allowable speed.

A fourth commenter suggests deleting the proposed change, stating that airspeeds greater than V_{NE} (up to at least 1.1 V_{NE}) are already considered in substantiating the structural adequacy and flight characteristics of the rotorcraft. This commenter further states that the added cost, weight, and complexity are not warranted by service experience, and questions whether a single system would suffice. In support of the question, this commenter explains the complexity in accounting for factors which can affect V_{NE}, such as power-on vs. power-off flight, gross weight, rotor speed, pressure altitude, and outside air temperature. This commenter leads the FAA to conclude that if it is this complex to determine V_{NE} (and, in fact, it is), then there is all the more reason to provide the pilot some assistance. As to the differences between the third and fourth commenters' interpretation of structural and flight verification above V_{NE}, (to 1.1 V_{NE}), the fourth commenter is correct in that intentional flight above V_{NE} is not permitted but the substantiation analysis and tests required do account for infrequent and inadvertent excursions beyond V_{NE}. Therefore, establishing a warning below V_{NE} is not necessary and requiring the warning to operate 3 knots above V_{NE} is appropriate to allow flight at V_{NE} without nuisance warnings. As rotorcraft have become larger and longer flights scheduled, fuel used has become a significant percentage of gross weight. To establish a V_{NE} based on maximum gross weight as is presently done precludes more economical operations at higher airspeeds as the flight progresses and the weight is reduced through fuel consumption. The proposed V_{NE} indicator would enhance the capability for this more economical operation.

The fourth commenter also suggests eliminating the warning device to be consistent with the suggestion to eliminate the V_{NE} indicator requirement, and further, that an aural warning could degrade the overall safety level by adding to the number of aural warnings now used; for example, fire, engine out, and landing gear. The third commenter also suggests that a warning light is sufficient. The proposal specifically states that the aural warning must differ distinctively from aural warnings used for other purposes so that there should be no confusion and the safety level would be enhanced. The proposal requires the V_{NE} indicator and warning only when other pilot cues are not provided; under these circumstances, a light, without aural warning, would more likely be overlooked. Accordingly, the amendment is adopted as proposed.

Proposal 2–58. One commenter agrees with the proposal. A second commenter assumes that proposed § 29.1309(b)(2)(i) would apply to the rotor and transmission systems since § 29.1309(a) refers to "this subchapter." This commenter's concern is that the proposed amendment would impose an extremely improbable failure requirement, defined as 1×10^{-9} or less per flight hour in Advisory Circular (AC) 29–2, Certification of Transport Category Rotorcraft, and AC 25.1309–1, System Design Analysis. The commenter states experience has shown the rotor and transmission systems failure rate to be only 1×10^{-6} at best. The FAA acknowledges that, as proposed, this section could be interpreted to include consideration of rotor and transmission systems, although the specific requirements for these systems are primarily contained in §§ 29.571, 29.901, 29.917, and 29.923. As noted in AC 29–2, § 29.1309 includes "but is not limited to electrical, pneumatic, and hydraulic power sources, associated distribution, and corresponding utilization systems," indicating, by these examples, the systems to which § 29.1309 is most applicable. There are other rotorcraft "systems" such as landing gear, propulsion, and fuselage that do not meet the 1×10^{-9} failure rate probability. To single out the rotor and transmission systems in this section is not appropriate. The general wording and concepts of this section have not caused problems in this area during past certifications.

The second commenter also notes that the term "improbable," as used in the proposed § 29.1309(b)(2)(ii) and as defined in AC 29–2, covers a failure rate range from 1×10^{-5} to 1×10^{-9}, which is too broad to be meaningful. This comment implies a need for an intermediate descriptive term and associated failure rate. Inclusion of such a term and associated failure rate would be more restrictive than the proposal since those systems to which the intermediate term would apply could be certificated under the proposal with a failure rate of only 10^{-5} per flight hour.

A third commenter questions the meaning and rationale for the phrases, "do not cause a hazard" (proposed § 29.1309(b)(1)), "prevent hazards" (proposed § 27.1309(b)), and "minimize hazards" (proposed § 27.1309(c)). In response to this comment, the FAA finds the phrase "do not cause a hazard" inappropriate since no difference in meaning is intended between the present § 29.1309(b) and proposed § 29.1309(b)(1) for Category B rotorcraft. Therefore, proposed § 29.1309(b)(1) is revised to read, "For Category B rotorcraft, the equipment, systems, and installations must be designed to prevent hazards to the rotorcraft if they malfunction or fail." The phrase "minimize hazards", as contrasted with "prevent hazards," allows (1) a level of safety that is compatible with single-engine rotorcraft, (2) less complexity, and (3) less costly systems and equipment. This lower level of safety for single-engine normal category rotorcraft is intended to permit practical designs that minimize weight and cost penalties.

A fourth commenter suggests combining proposed § 29.1309(b)(2) (i) and (ii) to state: "(2) For Category A rotorcraft, the equipment systems and installations must not prevent the continued safe flight and landing or cause injury to the occupants if they malfunction or fail, unless the malfunction or failure is shown to be extremely improbable." This suggestion would be more restrictive since it establishes the "extremely improbable" condition for a failure that only reduces the capability of the rotorcraft or crew. The FAA has also determined that injury to occupants is not a proper factor to be required in this analysis and this reference is deleted. This agrees with

Part 25 in this area. For this reason, the suggestion is beyond the scope of the notice. The commenter also refers to the National Transportation Safety Board (NTSB) Review of Rotorcraft Accidents 1977–1979 and quotes the document as showing that only 2.7 percent of the accidents were due to systems, instruments, and equipment. The FAA finds that during the 1977 to 1979 period, instrument-flight-equipped helicopters were a small percentage of the total helicopter fleet. This small percentage is not representative of the present fleet and it is projected to be even less representative each year. This is largely due to a rapid progression to increased system complexity from that of the 1977 to 1979 period. Systems such as electronic flight instrument systems (EFIS), fly-by-wire, and electronic fuel controls are now being presented for approval or are on the threshold of being presented. Loss of any one of these systems during instrument flight or loss of fly-by-wire or electronic fuel controls in any flight operation could be catastrophic. Therefore, the provisions of proposed § 29.1309(b)(2) (i) and (ii) are necessary to assure an adquate level of safety and are adopted.

The fourth commenter and a fifth commenter also suggest deleting the last sentence of the proposed § 29.1309(c) which requires designs to minimize crew errors which could create additional hazards. Both commenters state that it is too broad for clear application. While the requirement is broadly stated, there is a need to assure that installations such as identical switches, one frequently used and one infrequently used, such as fuel shutoff, are not placed side by side. It is impracticable to list all such poor design possibilities and the requirement is adopted as proposed.

The fourth and fifth commenters also suggest that the entire proposed § 29.1309(d) be deleted as it is "how to" which should only be in advisory circular material. This paragraph defines certain failure analysis criteria that can be stated clearly in the requirements. Accordingly, the amendment is adopted as proposed.

Proposal 2–59. This proposal would revise the airspeed system accuracy requirements of § 29.1323 to consider Category A and Category B flight profiles instead of differentiation by number of engines and to clarify that the requirements do not include instrument errors. One commenter states that since an airspeed error of not more than 5 knots is achievable, it should not be relaxed to 10 knots in a climb. Meeting the 10-knot error in a climb has been difficult for some rotorcraft and has resulted in complex systems or configurations requiring precise positioning of components. Retaining only a 5-knot error in a climb would not resolve these problems. The original conference proposal to allow a 15-knot error is an indication of the difficulties encountered in this area, but was considered to be excessive. A 10-knot error appears to be the best compromise between system complexity and safe, realistic indications. This same commenter suggests that the limit of a 3 percent error be deleted since an airspeed of 167 knots is required before it becomes a benefit. While 167 knots exceeds V_{NE} for most present-day rotorcraft, the proposal provides a design standard for the few present and any future rotorcraft with a V_{NE} greater than 167 knots.

A second commenter suggests that the minimum calibration speed in level flight be 30 knots rather than the proposed 20 knots because the difference is insignificant and does not improve safety or provide necessary information. The present rule requires single-engine rotorcraft systems to be calibrated at 20 knots and above, but requires calibration at 30 knots and above for multiengine rotorcraft. Amendment 29–3, effective February 25, 1968, changed the calibration requirement from 10 mph to the present 20 knots. Notice 82–12 explained the need for low-speed accuracy requirements for Category A operations. Accordingly, the amendment is adopted as proposed.

Proposal 2–60. This proposed change to § 29.1325(f) would relax the transport rotorcraft static systems accuracy of ±30 feet at all airspeeds to ±30 feet per 100 knots airspeed as currently required for transport airplanes. One commenter agrees with the proposal and states that Part 27 should reflect the same level of accuracy as that required by Part 29. There is no comparable requirement in Part 27 and one was not proposed. Therefore, this suggestion is beyond the scope of the notice. A second commenter notes that as written, the proposal would require zero altitude error at zero airspeed and suggests including the sentence from Part 25 which states that the error need not be less than ±30 feet. The FAA agrees and the amendment is changed to reflect that wording. A third commenter suggests changing the requirement to an allowable error of no more than ±30 feet below 100 knots or ±60 feet at higher speeds since there is no foreseeable need to consider speeds above 200 knots. However, the proposed amendment includes speeds above 200 knots and will not require a rule change if the unforeseeable does occur. Accordingly, the amendment is adopted with the change described.

Proposal 2–61. This proposal would clarify the design requirements for autopilots used in transport category rotorcraft and would add requirements in § 29.1329(e) for autopilots when interconnecting them with other systems. One commenter agrees with the proposal. A second commenter suggests that where an autopilot failure can result in hazardous effects on the control of the rotorcraft, a disengage control should be required to be on the cyclic control. Hazardous effects after a failure are precluded by compliance with the current § 29.1329(d). Requiring the disengaging control on the cyclic was discussed at the review conference and sufficient justification was provided to require only readily available disengagement. This decision is discussed in Notice 82–12, the major factor being that autopilot design must permit the pilot to control the rotorcraft first by overpowering a malfunctioning system, then disconnecting it. Where crew action is necessary to prevent a hazardous situation, this commenter suggests requiring a system to indicate the autopilot mode of operation and warning if it ceases to operate correctly. While the commenter's recommendation is beyond the scope of the notice, the suggestion for indicating the mode of operation is retained for possible future action. Accordingly, the amendment is adopted as proposed.

Proposal 2–62. This proposed revision would modify the requirement for a power adequacy indicator for each required flight instrument. It would define the point at which required power measurements must be made. One commenter agrees with the proposal. A second commenter suggests that the term "required flight instrument" in current § 29.1331(a) should be clarified and recommends using Part 25 as an example. The commenter notes that this is beyond the scope of the notice and recommends that Advisory Circular 29–2 address this question. Considering the definition of "instrument" in § 1.1, the FAA considers this section adequate as written but agrees that a discussion of the term "required" is appropriate for future revisions of AC 29–2. The amendment is adopted as proposed.

Proposal 2–63. The notice contained a typing error which identified the proposals for §§ 29.1333 and 29.1335 both as Proposals 2–63 and no Proposal 2–64. This did not appear to cause a problem since only one commenter

addressed these proposals and the comments were identified by section number, not proposal number. The commenter agrees with both proposals. The proposal for § 29.1333 would revise the requirements for instrument systems to reflect the increased complexity of instrumentation available, used, and necessary for transport rotorcraft to operate safely in the extreme range of operating environments to which they are now routinely exposed. The proposal for § 29.1335 would require Category B rotorcraft to meet the same electrical power source standards for required equipment and systems as are required for Category A rotorcraft. It further proposes wording as to the manner in which electrical power is maintained under fault conditions. The intent is to require two independent electrical power sources for essential load circuits for transport category rotorcraft. Accordingly, both amendments are adopted as proposed.

Proposal 2–65. This proposal would revise § 29.1357 by requiring Category B rotorcraft to have the overvoltage protection now required for Category A rotorcraft, by clarifying that all parts of a single essential system may be protected by the same circuit protective device, and by specifically stating under what circumstances automatic reset circuit breakers may be used. One commenter agrees with the proposal. A second commenter agrees with the proposal, but requests the term "essential to safety of flight" be well defined in advisory Circular 29–2. This will be done. The amendment is adopted as proposed.

Proposal 2–66. Only one comment was received and it agreed with the proposal.

Proposal 2–67. This proposal would change the wording of § 29.1525 to clarify the requirements for approved kinds of operation without affecting the actual certification process. One commenter agrees with the proposal. A second commenter suggests that the list of kinds of operations be expanded to include all typical kinds and to require, by § 29.1583(e), the flight manual to include the appropriate compliance status with § 29.1525. The proposal lists, as examples, all such kinds of operations except external-load carrying that are applicable to certification. Specific uses, such as passenger-carrying, power-line patrol, logging operations, etc., are huge in number and not a basic certification requirement. Section 29.1583(e) presently requires that the flight manual list the approved kinds of operations. Since kinds of operations are defined by § 29.1525, there is no need to repeat them in § 29.1583. Accordingly, the amendment is adopted as proposed.

Proposal 2–68. This proposed revision to § 29.1555(a) would remove flight controls and other obvious control functions from the marking requirements for cockpit controls. The proposed change to § 29.1555(e) would require a placard stating the maximum landing gear operating speed (V_{LO}) in rotorcraft with retractable gear. One commenter agrees with the proposal. A second commenter proposes deleting the requirement for a (V_{LO}) placard near the landing gear control. This is discussed under Proposal 2–28. The same change to require a limit speed placard in clear view of the pilot is included in this amendment. A third commenter suggests that a rotorcraft could have a (V_{LE}) different from (V_{LO}) and that this should also be placarded. Where (V_{LE}) and (V_{LO}) are different, the landing gear operating speed normally is less than the landing gear extended speed. Requiring only (V_{LO}) would be the most conservative, but would not preclude placards of other speeds where appropriate. This third commenter also suggests that standardization (shape and color) of controls should be added to the rule with detail information in Advisory Circular 29–2. This suggestion is beyond the scope of this notice. The amendment is adopted with the change identified in Proposal 2–28.

Proposal 2–69. This proposal would remove the requirement for a placard which states that the rotorcraft must comply with the operating limitations contained in the rotocraft flight and maintenance manuals. The required placard, containing over 50 words, was redundant to requirements specified elsewhere in the certification and operating rules. A much shorter placard was proposed. One commenter supports the proposal. A second commenter recommends the limitations placard reference the flight manual for information on limits. This same comment was made for Proposal 2–29; see that proposal for explanation. The amendment is adopted without change.

Proposal 2–70. This proposal implements an existing practice by specifying ambient temperature as an operating limitation. The proposal also adds the maximum allowable wind for safe operation near the ground as a limitation for transport Category A rotorcraft. One commenter agrees with the proposal but states that the explanation for excluding Category B rotorcraft from the maximum allowable wind limitation is not complete and the information should be included in the performance section of the flight manual. Proposal 2–72 does require the maximum demonstrated wind for safe opration near the ground as performance information for Category B rotorcraft. A second commenter suggests that the proposal be expanded to indicate more clearly that the sideward and rearward flight limits for crosswinds and tailwinds established by § 29.143(c) are the limits of concern. Section 29.143(c) is a controllability and maneuverability requirement. However, such factors as engine stall or surge due to inlet distortion, rotorcraft attitudes that could influence the unusable fuel quantity, and structural considerations also have been encountered as limiting conditions for maximum winds. Although these examples influenced the limits established for compliance with § 29.143(c), the controllability and maneuverability, in the narrowest sense, were not the limiting factors. Therefore, it is not appropriate to specify that this proposal is concerned only with § 29.143(c).

A third commenter states that the proposal seems appropriate, but goes on to state that the explanation implies restrictions to operations which would not be practicable or acceptable if operating to an unmanned site where wind and temperature information are not available. Under present VFR operating rules, when only area weather information is provided before departure, the pilot is responsible for evaluating the destination weather upon arrival. Under IFR operating rules, the pilot must be provided destination weather before beginning an instrument meteorological condition (IMC) approach. Therefore, the concerns of the third commenter are valid only under IMC where consideration must be given to several other IFR requirements that are more restrictive than those resulting from this proposal. The amendment is adopted as proposed.

Proposal 2–71. Only one comment was received and it agrees with the proposal.

Proposal 2–72. Three commenters suggest that the proposed § 29.1587 restriction on showing performance information beyond any operating limit should be deleted. The first of these commenters states that performance information beyond operating limits is used to calculate the effect of optional equipment. The second and third of these commenters give examples where the maximum allowable gross weight is greater with an external load. Two of these commenters suggest shading or other methods to indicate limits. These techniques have merit and have been used on recently certificated rotorcraft;

however, some proposed manuals have been submitted to FAA with data that greatly exceed several limits and with little or no indication of the limits. The wording of the amendment is changed as follows:

"Flight manual performance information which exceeds any operating limitation may be shown only to the extent necessary for presentation clarity or to determine the effects or approved optional equipment or procedures. When data beyond operating limits are show, the limits must be clearly indicated."

A fourth commenter suggests that instead of requiring the maximum demonstrated wind for starting and stopping the rotors in proposed § 29.1587(a)(4) and (b)(4), the maximum recommended wind should be required. Difficulty in obtaining the needed wind conditions for demonstration is cited as the major objection to the proposed wording. A fifth commenter states that even though the maximum demonstrated wind would appear under performance information, it would be interpreted as a limit. A sixth commenter suggest that a minimum of 17-knots wind, to be compatible with the control and manuverability requirements, be required for the demonstration.

Guidance on rotor characteristics during starting and stopping is very desirable. However, there are so many variables to be considered that significant questions are raised on the capability to develop and verify adequate information without large and expensive analysis and test programs. A few of the wind-related variables that must be considered are wind velocity, gust magnitude, gust frequency, relative direction of the wind, and turbulence—natural and object induced. Imposed upon the wind factors are the rotor design, aerodynamic characterists, and control techniques. Demonstrations (or recommendations) that address only a steady wind could be misleading. The FAA considers information on rotor characteristics during start and stop as highly desirable and encourages the manufacturers to provide as much guidance as feasible. However, in view of the difficulty and expense that would be required to develop and evaluate even an absolute minimum of data, the proposal to require the maximum wind for starting and stopping rotors is withdrawn.

A seventh commenter suggests that the last sentence of proposed § 29.1587(a) (5) and (6) be deleted. These sentences state that the distances determined for takeoff under § 29.59 and landing under §§ 29.75 and 29.77 must be used in establishing takeoff and landing field lenghts. The commenter is correct in stating that these sentences are unnecessary; therefore, they are deleted.

An eighth commenter objects to proposed § 29.1587(b)(6) which requires glide distance as a function of altitude. This commenter states that this is useless information and suggests that the speeds for minimum rate of descent and best glide angle with the associated glide angles be required. Requirements to provide the speeds associated with minimum rate of descent and best glide angle are included in § 29.1585 (Proposal 2–71). As discussed in the notice, glide distance as a function of altitude is more readily usable information than just glide angle. Accordingly, this portion of the amendment is adopted as proposed.

A ninth commenter suggests that out-of-ground-effect hover performance information should be required for all transport category rotorcraft. This is beyond the scope of the notice.

Amendment 29–21, effective after publication of Notice 82–12, added a new § 29.1587(b)(6). Therefore, the proposal is edited as necessary and is adopted as discussed.

Proposal 2–73. One commenter suggests that the proposed title of § 91.31 be changed to "Civil aircraft operating limitations." This section includes the requirements for markings and placards in older aircraft that do not require flight manuals. Therefore, the title proposed in the notice is more descriptive of the section. FAA review notes that the proposed wording could be interpreted to require compliance with only flight manual, marking, or placard operating limitations. Experimental aircraft, which includes amateur-built aircraft, do not require a flight manual, markings, or placards, but operating limitations normally are issued with the airworthiness certificate. To provide for this example, or any other similar case, the last phrase is revised to read: ", or as otherwise prescribed by the certificating authority of the country of registry," and the amendment is adopted.

Economic Summary

The FAA conducted an evaluation of the economic impact of these regulatory changes. A copy of the evaluation has been placed in the docket.

The assumptions used in preparing the economic impact estimates of the changes to the certification regulations are derived from earlier cost impact assessments of the proposals contained in Notice 82–12. Notice 82–12 invited public comments concerning technical and operational considerations and economic impact assumptions as they apply to rotorcraft performance, flight characteristics, systems, and equipment. Comments on the proposal were submitted by domestic and foreign manufacturer and operator trade associations. The majority of the comments recommend minor technical modifications and editorial clarifications. A number of comments, however, disagree with the economic impact estimates of various proposals. The FAA has evaluated the public comments and made final determinations regarding their impact. With only one exception, the FAA finds that the proposals determined to have an economic impact at the NPRM stage of rulemaking will also have an economic impact if the rule is adopted. The one exception is that the estimated savings resulting from § 29.175 is reduced from $50,000 per certification to a negligible amount as a result of industry comments and subsequent FAA technical amendments.

The five amendments determined to have an economic impact are related to limiting height-speed envelope, lightning protection for Parts 27 and 29 rotorcraft, providing of a means that will allow the pilot to determine that full control authority is available prior to flight for transport category rotorcraft, and adding an aural, never-exceed-speed indicator as a requirement for Part 29 certification. The evaluation of these amendments is summarized in Table 1.

TABLE 1.—COSTS AND SAVINGS OF NPRM 2 CHANGES HAVING ECONOMIC IMPACTS

Proposal	Cost (savings)	Benefits
27.79 **Limiting Height-Speed Envelope.** Revision of the weight requirements needed to establish performance at various altitudes.	(50 thousand per certification)	Reduction of Flight testing time by 10 hours and demonstration weight by approximately 15% at altitudes above sea level.
29.671 **Control Systems: General.** The provisions of a means performing a control command verification procedure prior to flight in rotorcraft with boosted flight control systems.	5.2 million total incurred for first 3 production years.[1]	Benefit not quantified. Undetermined benefits are expected to accrue to operators and travelers by the prevention of accidents attributed to flight control system failures.
27.610 **Lightning Protection.** (See 29.610.)	(See 29.610)	(See 29.610).

TABLE 1.—COSTS AND SAVINGS OF NPRM 2 CHANGES HAVING ECONOMIC IMPACTS—Continued

Proposal	Cost (savings)	Benefits
29.610 **Lightning Protection.** The protection of digital/electronic avionic and flight control systems against the disruptive effects of lightning strikes. The rule places special emphasis on rotorcraft with composite material primary and secondary flight structures.	The FAA requested industry comments on the cost of the lightning protection requirements of this section. Commentors did not provide cost data analysis required on the design and data analysis required to protect advanced digital avionics flight control systems will be funished by a major FAA, NASA, and DOD task force research effort. The results of this study are expected to minimize the cost impact and the FAA believes that the rule will be cost beneficial.	The FAA believes that benefits will accrue to operators and travelers by the prevention of accidents attributed to the catastrophic effects of lightning strikes on critical avionics, flight control systems, structures, and fuel systems.
29.1303 **Flight and Navigation Instruments**	$1.1 million total incurred for first three production years, including maintenance costs.[2]	The provision of maxium allowable airspeed indicating system is expected to prevent fatigue failure accidents attributed to overspeed conditions. On the basis of the $2.0 million average cost of fatigue failure accidents, the amendment would have to prevent less than one accident to justify its costs.

[1] Cost estimates are based on the addition of an electronic motor to allow full control movement prior to flight. The FAA did not receive comments on the cost of implementing alternative means of complying with the proposal.

[2] The cost estimate is based on an instrumentation developed by one manufacturer to provide V_{YE} measurement and warning capability and to perform a power assurance check. The costs shown here are those attributable to the V_{YE} indicator and V_{NE} overspeed warning device. The cost shown should provide an instrument that meets all safety aspects and gives a true speed measurement under all factors which can use V_{NE} to vary.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the amendments to Parts 1, 27, 29, and 91 contained in this final rule, at promulgation, will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA recently adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities and guidance for the conduct of regulatory flexibility analyses and reviews. The FAA small entity size standards criteria define a small helicopter manufacturer as an independently owned and managed firm having fewer than 75 employees. Under the FAA size standard criteria, only one manufacturer subject to the certification changes to Parts 1, 27, 29, and 91 has fewer than 75 employees. Table 2 shows domestic helicopter manufacturers and designation as to size. Accordingly, the amendments to Parts 1, 27, 29, and 91 contained in this final rule will not impact a substantial number of small entities.

There are no known diseconomies of scale associated with the anticipated marginal increase in certification costs. This change to the certification rules for Parts 27 and 29 helicopter manufacturers is not perceived to raise any barrier to entry into this market for small manufacturers.

TABLE 2.—PARTS 27 AND 29 ROTORCRAFT MANUFACTURERS

	Firm size
Part 27 Manufacturers:	
Brantly-Hynes Helicopters, Inc	Small.
Enstrom Helicopters Corp	Large.
Hiller Aviation	Do.
Hughes Helicopters, Inc	Do.
Kaman Aerospace	Do.
Robinson Helicopters	Do.
Part 29 Manufacturers:	
Bell Helicopter Textron, Inc	Do.
Boeing Vertol Company	Do.
Sikorsky Aircraft—United Technologies	Do.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 2120-0018.

List of Subjects

14 CFR Part 1

Airmen, Flights, Aircraft pilots, Pilots, Transportation, Air Safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Helicopters, Rotorcraft.

14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Air transportation, Airworthiness directives and standards.

Adoption of the Amendment

Accordingly, Parts 1, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 91) are amended as follows, effective December 6, 1984.

PART 1—DEFINITIONS AND ABBREVIATIONS

1. By amending § 1.1 by adding the following definitions after the definitions of "Clearway" and "Takeoff power," respectively:

§ 1.1 General definitions.

* * * * *

"Climbout Speed," with respect to rotorcraft, means a referenced airspeed which results in a flight path clear of the height-velocity envelope during initial climbout.

* * * * *

"Takeoff Safety Speed" means a referenced airspeed obtained after lift-off at which the required one-engine-inoperative climb performance can be achieved.

* * * * *

2. By amending § 1.2 to add a definition for "V_{TOSS}" after "V_{SI}" as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"V_{TOSS}" means takeoff safety speed for Category A rotorcraft.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

§ 27.21 [Amended]

3. By amending § 27.21 by removing the paragraph designator "(a)" in § 27.21(a); by changing paragraph designators (a)(1) and (a)(2) to (a) and (b), respectively; and by removing paragraph (b).

4. By amending § 27.45 by adding a new paragraph (f) to read as follows:

§ 27.45 General.

* * * * *

(f) For turbine-engine-powered rotorcraft, a means must be provided to permit the pilot to determine prior to takeoff that each engine is capable of

developing the power necessary to achieve the applicable rotorcraft performance prescribed in this subpart.

5. By adding a new § 27.71 to read as follows:

§ 27.71 Glide performance.

For single-engine helicopters and multiengine helicopters that do not meet the Category A engine isolation requirements of Part 29 of this chapter, the minimum rate of descent airspeed and the best angle-of-glide airspeed must be determined in autorotation at—

(a) Maximum weight; and

(b) Rotor speed(s) selected by the applicant.

6. By revising § 27.79(a)(2) to read as follows:

§ 27.79 Limiting height-speed envelope.

(a) * * *

(2) Weight, from the maximum weight (at sea level) to the lesser weight selected by the applicant for each altitude covered by paragraph (a)(1) of this section. For helicopters, the weight at altitudes above sea level may not be less than the maximum weight or the highest weight allowing hovering out of ground effect which is lower.

* * * * *

7. By amending § 27.141 by revising paragraphs (a) and (a)(1) to read as follows:

§ 27.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the flight characteristics requirements of this subpart—

(1) At the altitudes and temperatures expected in operation;

* * * * *

8. By amending § 27.143 by removing the word "and" in paragraph (c)(2); by inserting "; and" at the end of (c)(3); and by adding a new paragraph (c)(4) to read as follows:

§ 27.143 Controllability and maneuverability.

* * * * *

(c) * * *

(4) Altitude, from standard sea level conditions to the maximum altitude capability of the rotorcraft or 7,000 feet, whichever is less.

* * * * *

9. By adding a new § 27.151 to read as follows:

§ 27.151 Flight controls.

(a) Longitudinal, lateral, directional, and collective controls may not exhibit excessive breakout force, friction, or preload.

(b) Control system forces and free play may not inhibit a smooth, direct rotorcraft response to control system input.

10. By revising § 27.161(a) to read as follows:

§ 27.161 Trim control.

* * * * *

(a) Must trim any steady longitudinal, lateral, and collective control forces to zero in level flight at any appropriate speed; and

* * * * *

11. By revising § 27.173 to read as follows:

§ 27.173 Static longitudinal stability.

(a) The longitudinal control must be designed so that a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed.

(b) With the throttle and collective pitch held constant during the maneuvers specified in § 27.175 (a) through (c), the slope of the control position versus speed curve must be positive throughout the full range of altitude for which certification is requested.

(c) During the maneuver specified in § 27.175(d), the longitudinal control position versus speed curve may have a negative slope within the specified speed range if the negative motion is not greater than 10 percent of total control travel.

12. By revising § 27.175(d) to read as follows:

§ 27.175 Demonstration of static longitudinal stability.

* * * * *

(d) *Hovering.* For helicopters, the longitudinal cyclic control must operate with the sense and direction of motion prescribed in § 27.173 between the maximum approved rearward speed and a forward speed of 17 knots with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required to maintain an approximate constant height in ground effect;

(4) The landing gear extended; and

(5) The helicopter trimmed for hovering.

13. By adding a new § 27.177 to read as follows:

§ 27.177 Static directional stability.

Static directional stability must be positive with throttle and collective controls held constant at the trim conditions specified in § 27.175 (a) and (b). This must be shown by steadily increasing directional control deflection for sideslip angles up to ±10° from trim. Sufficient cues must accompany sideslip to alert the pilot when approaching sideslip limits.

14. By adding a new § 27.610 to read as follows:

§ 27.610 Lightning protection.

(a) The rotorcraft must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Electrically bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the rotorcraft.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minimize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resulting electrical current so as not to endanger the rotorcraft.

15. By adding a new § 27.672 to read as follows:

§ 27.672 Stability augmentation, automatic, and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this Part, such systems must comply with § 27.671 of this Part and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot is unaware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength by overriding the failure by movement of the flight controls in the normal sense and deactivating the failure system.

(c) It must be shown that after any single failure of the stability

augmentation system or any other automatic or power-operated system—

(1) The rotorcraft is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations;

(2) The controllability and maneuverability requirements of this Part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and rotorcraft configurations) which is described in the Rotorcraft Flight Manual; and

(3) The trim and stability characteristics are not impaired below a level needed to permit continued safe flight and landing.

16. By adding a new § 27.673 to read as follows:

§ 27.673 Primary flight control.

Primary flight controls are those used by the pilot for immediate control of pitch, roll, yaw, and vertical motion of the rotorcraft.

17. By adding a new § 27.729 to read as follows:

§ 27.729 Retracting mechanism.

For rotorcraft with retractable landing gear, the following apply:

(a) *Loads.* The landing gear, retracting mechansim, wheel-well doors, and supporting structure must be designed for—

(1) The loads occurring in any maneuvering condition with the gear retracted;

(2) The combined friction, inertia, and air loads occurring during retraction and extension at any airspeed up to the design maximum landing gear operating speed; and

(3) The flight loads, including those in yawed flight, occurring with the gear extended at any airspeed up to the design maximum landing gear extended speed.

(b) *Landing gear lock.* A positive means must be provided to keep the gear extended.

(c) *Emergency operation.* When other than manual power is used to operate the gear, emergency means must be provided for extending the gear in the event of—

(1) Any reasonably probable failure in the normal retraction system; or

(2) The failure of any single source of hydraulic, electric, or equivalent energy.

(d) *Operation tests.* The proper functioning of the retracting mechanism must be shown by operation tests.

(e) *Position indicator.* There must be a means to indicate to the pilot when the gear is secured in the extreme positions.

(f) *Control.* The location and operation of the retraction control must meet the requirements of §§ 27.777 and 27.779.

(g) *Landing gear warning.* An aural or equally effective landing gear warning device must be provided that functions continuously when the rotorcraft is in a normal landing mode and the landing gear is not fully extended and locked. A manual shutoff capability must be provided for the warning device and the warning system must automatically reset when the rotorcraft is no longer in the landing mode.

18. By revising the introductory paragraph to § 27.735 to read as follows:

§ 27.735 Brakes.

For rotorcraft with wheel-type landing gear, a braking device must be installed that is—

* * * * *

19. By adding a new § 27.779 to read as follows:

§ 27.779 Motion and effect of cockpit controls.

Cockpit controls must be designed so that they operate in accordance with the following movements and actuation:

(a) Flight controls, including the collective pitch control, must operate with a sense of motion which corresponds to the effect on the rotorcraft.

(b) Twist-grip engine power controls must be designed so that, for lefthand operation, the motion of the pilot's hand is clockwise to increase power when the hand is viewed from the edge containing the index finger. Other engine power controls, excluding the collective control, must operate with a forward motion to increase power.

(c) Normal landing gear controls must operate downward to extend the landing gear.

20. By revising the title and § 27.785 to read as follows:

§ 27.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the rotorcraft, at each station designated for occupancy during takeoff and landing, must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces, and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 27.561.

(b) Each occupant must be protected from head injury by—

(1) For each crewmember seat and each seat beside a crewmember front seat, a safety belt and harness that will prevent the head from contacting any injurious object; and

(2) For each seat not covered under paragraph (b)(1)—

(i) A safety belt plus the absence of injurious objects within striking radius of the head;

(ii) A safety belt plus a shoulder harness that will prevent the head from contacting any injurious object; or

(iii) A safety belt plus an energy-absorbing rest that will support the arms, shoulders, head, and spine.

(c) Each pilot's seat must have a combined safety belt and shoulder harness with a single-point release that permits the pilot, when seated with safety belt and sholder harness fastened, to perform all of the pilot's necessary functions. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(d) If seat backs do not have a firm handhold, there must be hand grips or rails along each aisle to enable the occupants to steady themselves while using the aisle in moderately rough air.

(e) Each projecting object that could injure persons seated or moving about in the rotorcraft in normal flight must be padded.

(f) Each seat and its supporting structure must be designed for an occupant weight of 170 pounds, considering the maximum load factors, inertia forces, and reactions between the occupant, seat, and safety belt or harness corresponding with the applicable flight and ground-load conditions, including the emergency landing conditions of § 27.561. In addition—

(1) Each pilot seat must designed for the reactions resulting from the application of the pilot forces prescribed in § 27.397; and

(2) The inertia forces prescribed in § 27.561 must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

(i) Each seat to the structure; and

(ii) Each safety belt or harness to the seat or structure.

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 27.561, considering the occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60 percent load to the safety belt and at least 60 percent load to the shoulder harness. If the safety belt is capable of being used

without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) When a headrest is used, the headrest and its supporting structure must be designed to resist the inertia forces specified in § 27.561, with a 1.33 fitting factor and a head weight of at least 13 pounds.

§ 27.807 [Amended]

21. By amending § 27.807(a) by removing the last sentence.

22. By amending § 27.1309 by removing the words "*Functioning and reliability.*" in paragraph (a); by revising paragraph (b); and by adding new paragraphs (c) and (d) to read as follows:

§ 27.1309 Equipment, systems, and installations.

* * * * *

(b) The equipment, systems, and installations of a multiengine rotorcraft must be designed to prevent hazards to the rotorcraft in the event of a probable malfunction or failure.

(c) The equipment, systems, and installations of single-engine rotorcraft must be designed to minimize hazards to the rotorcraft in the event of a probable malfunction or failure.

(d) In showing compliance with paragraph (a), (b), or (c) of this section, the effects of lightning strikes on the rotorcraft must be considered in accordance with § 27.610.

23. By adding a new § 27.1329 to read as follows:

§ 27.1329 Automatic pilot system.

(a) Each automatic pilot system must be designed so that the automatic pilot can—

(1) Be sufficiently overpowered by one pilot to allow control of the rotorcraft; and

(2) Be readily and positively disengaged by each pilot to prevent it from interfering with control of the rotorcraft.

(b) Unless there is automatic synchronization, each system must have a means to readily indicate to the pilot the alignment of the actuating device in relation to the control system it operates.

(c) Each manually operated control for the system's operation must be readily accessible to the pilots.

(d) The system must be designed and adjusted so that, within the range of adjustment available to the pilot, it cannot produce hazardous loads on the rotorcraft or create hazardous deviations in the flight path under any flight condition appropriate to its use, either during normal operation or in the event of a malfunction, assuming that corrective action begins within a reasonable period of time.

(e) If the automatic pilot integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation.

§ 27.1413 [Amended]

24. By amending § 27.1413 by removing paragraphs (a) and (b) and the paragraph designator "(c)" only of paragraph (c).

25. By amending § 27.1505 by removing the word "or" at the end of paragraph (a)(2)(i); be removing the period from the end of paragraph (a)(2)(ii) and adding "; or" in its place; and by adding a new paragraph (a)(2)(iii) to read as follows:

§ 27.1505 Never-exceed speed.

(a) * * *

(2) * * *

(iii) 0.9 times the maximum speed substantiated for advancing blade tip mach number effects.

* * * * *

§ 27.1519 [Amended]

26. By amending § 27.1519 by removing the paragraph "(a)" designation and by removing paragraph (b) in its entirety.

27. By revising § 27.1525 to read as follows:

§ 27.1525 Kinds of operations.

The kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved are established by demonstrated compliance with the applicable certification requirements and by the installed equipment.

28. By revising § 27.1555(a) and adding a new paragraph (e) to read as follows:

§ 27.1555 Control markings.

(a) Each cockpit control, other than primary flight controls or control whose function is obvious, must be plainly marked as to its function and method of operation.

* * * * *

(e) For rotorcraft incorporating retractable landing gear, the maximum landing gear operating speed must be displayed in clear view of the pilot.

29. By revising § 27.1559 to read as follows:

§ 27.1559 Limitations placard.

There must be a placard in clear view of the pilot that specifies the kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved.

30. By revising § 27.1585(a) and adding a new paragraph (g) to read as follows:

§ 27.1585 Operating procedures.

(a) Parts of the manual containing operating procedures must have information concerning any normal and emergency procedures and other information necessary for safe operation, including takeoff and landing procedures and associated airspeeds. The manual must contain any pertinent information including—

(1) The kind of takeoff surface used in the tests and each appropriate climbout speed; and

(2) The kind of landing surface used in the tests and appropriate approach and glide airspeeds.

* * * * *

(g) The airspeeds and rotor speeds for minimum rate of descent and best glide angle as prescribed in § 27.71 must be provided.

31. By amending § 27.1587 by revising paragraph (a)(2)(ii); by removing the period at the end of paragraph (a)(2)(iii) and inserting"; and" in its place; by adding a new paragraph (a)(2)(iv); by adding the word "and" after the semicolon at the end of paragraph (b)(1); by removing paragraph (b)(2); and by redesignating paragraph (b)(3) as (b)(2) as follows:

§ 27.1587 Performance information.

(a) * * *

(2) * * *

(ii) The maximum safe wind for operation near the ground. If there are combinations of weight, altitude, and temperature for which performance information is provided and at which the rotorcraft cannot land and takeoff safely with the maximum wind value, those portions of the operating envelope and the appropriate safe wind conditions shall be identified in the flight manual;

(iii) * * *

(iv) Glide distance as a function of altitude when autorotating at the speeds and conditions for minimum rate of descent and best glide as determined in § 27.71.

* * * * *

PART 29–AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

§ 29.21 [Amended]

32. By amending § 29.21 by removing paragraph (b); by removing the designator "(a)" in § 29.21(a); and by redesignating paragraphs (a)(1) and (a)(2) as (a) and (b), respectively.

33. By amending § 29.45 by revising (b)(2) and (c)(2) and by adding a new paragraph (f) to read as follows:

§ 29.45 General.

* * * * *

(b) * * *

(2) For the approved range of atmospheric variables.

(c) * * *

(2) The power absorbed by the accessories and services at the values for which certification is requested and approved.

* * * * *

(f) For turbine-engine-power rotorcraft, a means must be provided to permit the pilot to detemine prior to takeoff that each engine is capable of developing the power necessary to achieve the applicable rotorcraft performance prescribed in this subpart.

34. By revising § 29.59(b) and introductory paragraph (c) to read as follows:

§ 29.59 Takeoff path: Category A.

* * * * *

(b) The rejected takeoff path must be established with not more than takeoff power on each engine from the start of takeoff to the critical decision point, at which point it is assumed that the critical engine becomes inoperative and that the rotorcraft is brought to a safe stop.

(c) The takeoff climbout path must be established with not more than takeoff power on each engine from the start of takeoff to the critical decision point, at which point it is assumed that the critical engine becomes inoperative and remains inoperative for the rest of the takeoff. The rotorcraft must be accelerated to achieve the takeoff safety speed and a height of 35 feet above the ground or greater and the climbout must be made—

* * * * *

35. By amending § 29.67 by revising paragraphs (a)(1), (a)(1)(ii), (a)(2), and (a)(2)(ii) to read as follows:

§ 29.67 Climb: One-engine inoperative.

(a) * * *

(1) The safety rate of climb without ground effect must be at least 100 feet per minute for each weight, altitude, and temperature for which takeoff and landing data are to be scheduled, with—

(i) * * *

(ii) The most unfavorable center of gravity;

* * * * *

(2) The steady rate of climb without ground effect must be at least 150 feet per minute 1,000 feet above the takeoff and landing surfaces for each weight, altitude, and temperature for which takeoff and landing data are to be scheduled, with—

(i) * * *

(ii) The most unfavorable center of gravity;

* * * * *

36. By amending § 29.77 by removing the word "and" at the end of paragraph (a); by removing the period at the end of paragraph (b) and inserting "; and" in its place; and by adding a new paragraph (c) to read as follows:

§ 29.77 Balked landing: Category A.

* * * * *

(c) The rotorcraft does not descend below 35 feet above the landing surface in the maneuver described in paragraph (b) of this section.

37. By amending § 29.141 by revising introductory paragraph (a) and (a)(1) to read as follows:

§ 29.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the flight characteristics requirements of this subpart—

(1) At the approved operating altitudes and temperatures;

* * * * *

38. By revising § 29.143(c) (1) and (2) and by adding (c)(3) to read as follows:

§ 29.143 Controllability and maneuverability.

* * * * *

(c) * * *

(1) Critical weight;

(2) Critical center of gravity; and

(3) Critical rotor r.p.m.

* * * * *

39. By adding a new § 29.151 to read as follows:

§ 29.151 Flight controls.

(a) Longitudinal, lateral, directional, and collective controls may not exhibit excessive breakout force, friction, or preload.

(b) Control system forces and free play may not inhibit a smooth, direct rotorcraft response to control system input.

40. By revising § 29.161(a) to read as follows:

§ 29.161 Trim control.

* * * * *

(a) Must trim any steady longitudinal, lateral, and collective control forces to zero in level flight at any appropriate speed; and

* * * * *

41. By revising § 29.173 to read as follows:

§ 29.173 Static longitudinal stability.

(a) The longitudinal control must be designed so that a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed.

(b) With the throttle and collective pitch held constant during the maneuvers specified in § 29.175 (a) through (c), the slope of the control position versus speed curve must be positive throughout the full range of altitude for which certification is requested.

(c) During the maneuver specified in § 29.175(d), the longitudinal control position versus speed curve may have a negative slope within the specified speed range if the negative motion is not greater than 10 percent of total control travel.

42. By amending § 29.175 by revising introductory paragraphs (a) and (c) and the entire paragraph (d) to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from 0.85 V_Y, or 15 knots below V_Y, whichever is less, to 1.2 V_Y or 15 knots above V_Y, whichever is greater, with—

* * * * *

(c) *Autorotation.* Static longitudinal stability must be shown in autorotation at airspeeds from 0.5 times the speed for minimum rate of descent, or 0.5 times the maximum range glide speed for Category A rotorcraft, to V_{NE} or to 1.1 V_{NE} (power-off) if V_{NE} (power-off) is established under § 29.1505(c), and with—

* * * * *

(d) *Hovering.* For helicopters, the longitudinal cyclic control must operate with the sense, direction of motion, and position as prescribed in § 29.173 between the maximum approved rearward speed and a forward speed of 17 knots with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required to maintain an approximate constant height in ground effect;

(4) The landing gear extended; and

(5) The helicopter trimmed for hovering.

43. By adding a new § 29.177 to read as follows:

§ 29.177 Static directional stability.

Static directional stability must be positive with throttle and collective

controls held constant at the trim conditions specified in § 29.175 (a), (b), and (c). Sideslip angle must increase steadily with directional control deflection for sideslip angles up to ±10° from trim. Sufficient cues must accompany sideslip to alert the pilot when approaching sideslip limits.

44. By adding a new § 29.181 to read as follows:

§ 29.181 Dynamic stability: Category A rotorcraft.

Any short-period oscillation occurring at any speed from V_Y to V_{NE} must be positively damped with the primary flight controls free and in a fixed position.

45. By adding a new § 29.610 to read as follows:

§ 29.610 Lightning protection.

(a) The rotorcraft must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Electrically bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the rotorcraft.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minmize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resulting electrical current to not endanger the rotorcraft.

46. By amending § 29.671 by adding a new paragraph (c) to read as follows:

§ 29.671 General.

* * * * *

(c) A means must be provided to allow full control movement of all primary flight controls prior to flight, or a means must be provided that will allow the pilot to determine that full control authority is available prior to flight.

47. By adding a new § 29.672 to read as follows:

§ 29.672 Stability augmentation, automatic, and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated system is necessary to show compliance with the flight characteristics requirements of this Part, the system must comply with § 29.671 of this Part and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot is unaware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength, by overriding the failure by moving the flight controls in the normal sense, and by deactivating the failed system.

(c) It must be show that after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The rotorcraft is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations;

(2) The controllability and maneuverability requirements of this Part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and rotorcraft configurations) which is described in the Rotorcraft Flight Manual; and

(3) The trim and stability characteristics are not impaired below a level needed to allow continued safe flight and landing.

48. By adding a new § 29.673 to read as follows:

§ 29.673 Primary flight controls.

Primary flight controls are those used by the pilot for immediate control of pitch, roll, yaw, and vertical motion of the rotorcraft.

49. By amending § 29.729 by adding new introductory text; by replacing the word *"General."* with the words *"Loads."* in paragraph (a); by revising paragraph (f); and by adding a new paragraph (g) to read as follows:

§ 29.729 Retracting mechanism.

For rotorcraft with retractable landing gear, the following apply:

* * * * *

(f) *Control.* The location and operation of the retraction control must meet the requirements of §§ 29.777 and 29.779.

(g) *Landing gear warning.* An aural or equally effective landing gear warning device must be provided that functions continuously when the rotorcraft is in a normal landing mode and the landing gear is not fully extended and locked. A manual shutoff capability must be provided for the warning device and the warning system must automatically reset when the rotorcraft is no longer in the landing mode.

50. By revising the introductory paragraph to § 29.735 to read as follows:

§ 29.735 Brakes.

For rotorcraft with wheel-type landing gear, a braking device must be installed that is—

* * * * *

51. By revising § 29.771(b) to read as follows:

§ 29.771 Pilot compartment.

* * * * *

(b) If there is provision for a second pilot, the rotorcraft must be controllable with equal safety from either pilot position. Flight and powerplant controls must be designed to prevent confusion or inadvertent operation when the rotorcraft is piloted from either position;

* * * * *

52. By adding a new § 29.779 to read as follows:

§ 29.779 Motion and effect of cockpit controls.

Cockpit controls must be designed so that they operate in accordance with the following movements and actuation:

(a) Flight controls, including the collective pitch control, must operate with a sense of motion which corresponds to the effect on the rotorcraft.

(b) Twist-grip engine power controls must be designed so that, for lefthand operation, the motion of the pilot's hand is clockwise to increase power when the hand is viewed from the edge containing the index finger. Other engine power controls, excluding the collective control, must operate with a forward motion to increase power.

(c) Normal landing gear controls must operate downward to extend the landing gear.

53. By revising § 29.785(a), (b), and (c), and by adding new paragraphs (g) and (h) to read as follows:

§ 29.785 Seats, berth, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 29.561.

(b) Each occupant must be protected from head injury by—

(1) For each crewmember seat and each seat beside a crewmember front seat, a safety belt and harness that will

prevent the head from contacting any injurious object; and

(2) For each seat not covered under subparagraph (b)(1)—

(i) A safety belt plus the absence of injurious objects within striking radius of the head;

(ii) A safety belt, plus a shoulder harness that will prevent the head from contracting any injurious object; or

(iii) A safety belt plus an energy-absorbing rest that will support the arms, shoulders, head and spine.

(c) Each pilot's seat must have a combined safety belt and shoulder harness with a single-point release that allows the pilot, when seated with safety belt and shoulder harness fastened, to perform all of the pilot's necessary functions. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

* * * * *

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 29.561, considering an occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60 percent load to the safety belt and at least 60 percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) When a headrest is used, the headrest and its supporting structure must be designed to resist the inertia forces specified in § 29.561, with a 1.33 fitting factor and a head weight of at least 13 pounds.

§ 29.811 [Amended]

54. By amending § 29.811 by removing paragraphs (f) and (g) and redesignating paragraphs (h) and (i) as paragraphs (f) and (g), respectively.

55. By adding a new § 29.812 to read as follows:

§ 29.812 Emergency lighting.

For transport Category A rotorcraft, the following apply:

(a) A source of light with its power supply independent of the main lighting system must be installed to—

(1) Illuminate each passenger emergency exit marking and locating sign; and

(2) Provide enough general lighting in the passenger cabin so that the average illumination, when measured at 40-inch intervals at seat armrest height on the center line of the main passenger aisle, is at least 0.05 foot-candle.

(b) Exterior emergency lighting must be provided at each emergency exit. The illumination may not be less than 0.05 foot-candle (measured normal to the direction of incident light) for minimum width on the ground surface, with landing gear extended, equal to the width of the emergency exit where an evacuee is likely to make first contact with the ground outside the cabin. The exterior emergency lighting may be provided by either interior or exterior sources with light intensity measurements made with the emergency exits open.

(c) Each light required by paragraph (a) or (b) of this section must be operable manually from the cockpit station and from a point in the passenger compartment that is readily accessible. The cockpit control device must have an "on," "off," and "armed" position so that when turned on at the cockpit or passenger compartment station or when armed at the cockpit station, the emergency lights will either illuminate or remain illuminated upon interruption of the rotorcraft's normal electric power.

(d) Any means required to assist the occupants in descending to the ground must be illuminated so that the erected assist means is visible from the rotorcraft.

(1) The assist means must be provided with an illumination of not less than 0.03 foot-candle (measured normal to the direction of the incident light) at the ground end of the erected assist means where an evacuee using the established escape route would normally make first contact with the ground, with the rotorcraft in each of the attitudes corresponding to the collapse of one or more legs of the landing gear.

(2) If the emergency lighting subsystem illuminating the assist means is independent of the rotorcraft's main emergency lighting system, it—

(i) Must automatically be activated when the assist means is erected;

(ii) Must provide the illumination required by paragraph (d)(1); and

(iii) May not be adversely affected by stowage.

(e) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient conditions after an emergency landing.

(f) If storage batteries are used as the energy supply for the emergency lighting system, they may be recharged from the rotorcraft's main electrical power system provided the charging circuit is designed to preclude inadvertent battery discharge into charging circuit faults.

§ 29.855 [Amended]

56. By amending § 29.855(d) by adding the words "or smoke" after the words "detection of fires".

57. By amending § 29.1303 by revising paragraph (a) and by adding a new paragraph (j) to read as follows:

§ 29.1303 Flight and navigation instruments.

* * * * *

(a) An airspeed indicator. For Category A rotorcraft with V_{NE} less than a speed at which unmistakable pilot cues provide overspeed warning, a maximum allowable airspeed indicator must be provided. If maximum allowable airspeed varies with weight, altitude, temperature, or r.p.m., the indicator must show that variation.

* * * * *

(j) For Category A rotorcraft, a speed warning device when V_{NE} is less than the speed at which unmistakable overspeed warning is provided by other pilot cues. The speed warning device must give effective aural warning (differing distinctively from aural warnings used for other purposes) to the pilots whenever the indicated speed exceeds V_{NE} plus 3 knots and must operate satisfactorily throughout the approved range of altitudes and temperatures.

58. By amending § 29.1309 by removing the phrase "*Functioning and reliability.*" from paragraph (a); by revising paragraphs (b), (c), (d), and (e); and by adding new paragraphs (f), (g), and (h) to read as follows:

§ 29.1309 Equipment, systems, and installations.

* * * * *

(b) The rotorcraft systems and associated components, considered separately and in relation to other systems, must be designed so that—

(1) For Category B rotorcraft, the equipment, systems, and installations must be designed to prevent hazards to the rotorcraft if they malfunction or fail; or

(2) For Category A rotorcraft—

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the rotorcraft is extremely improbable; and

(ii) The occurrence of any other failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions is improbable.

(c) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and

associated monitoring and warning means must be designed to minimize crew errors which could create additional hazards.

(d) Compliance with the requirements of paragraph (b)(2) of this section must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider—

(1) Possible modes of failure, including malfunctions and damage from external sources;

(2) The probability of multiple failures and undetected failures;

(3) The resulting effects on the rotorcraft and occupants, considering the stage of flight and operating conditions; and

(4) The crew warning cues, corrective action required, and the capability of detecting faults.

(e) For Category A rotorcraft, each installation whose functioning is required by this subchapter and which requires a power supply is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the system with the system functioning normally.

(2) Essential loads, after failure of any one prime mover, power converter, or energy storage device.

(3) Essential loads, after failure of—

(i) Any one engine, on rotorcraft with two engines; and

(ii) Any two engines, on rotorcraft with three or more engines.

(f) In determining compliance with paragraphs (e)(2) and (3) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operations authorized. Loads not required for controlled flight need not be considered for the two-engine-inoperative condition on rotorcraft with three or more engines.

(g) In showing compliance with paragraphs (a) and (b) of this section with regard to the electrical system and to equipment design and installation, critical environmental conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this subchapter, except equipment covered by Technical Standard Orders containing environmental test procedures, the ability to provide continuous, safe service under foreseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other aircraft.

(h) In showing compliance with paragraphs (a) and (b) of this section, the effects of lightning strikes on the rotorcraft must be considered in accordance with § 29.610.

59. By amending § 29.1323 by revising introductory paragraph (b), (b)(1), (c), and (d) to read as follows:

§ 29.1323 Airspeed indicating system.

* * * * *

(b) Each system must be calibrated to determine system error excluding airspeed instrument error. This calibration must be determined—

(1) In level flight at speeds of 20 knots and greater, and over an appropriate range of speeds for flight conditions of climb and autorotation; and

* * * * *

(c) For Category A rotorcraft—

(1) The indication must allow consistent definition of the critical decision point; and

(2) The system error, excluding the airspeed instrument calibration error, may not exceed—

(i) Three percent or 5 knots, whichever is greater, in level flight at speeds above 80 percent of takeoff safety speed; and

(ii) Ten knots in climb at speeds from 10 knots below takeoff safety speed to 10 knots above V_Y.

(d) For Category B rotorcraft, the system error, excluding the airspeed instrument calibration error, may not exceed 3 percent or 5 knots, whichever is greater, in level flight at speeds above 80 percent of the climbout speed attained at 50 feet when complying with § 29.63.

* * * * *

60. By revising § 29.1325(f) to read as follows:

§ 29.1325 Static pressure and pressure altimeter systems.

* * * * *

(f) Each system must be designed and installed so that an error in indicated pressure altitude, at sea level, with a standard atmosphere, excluding instrument calibration error, does not result in an error of more than ±30 feet per 100 knots speed. However, the error need not be less than ±30 feet.

* * * * *

61. By amending § 29.1329 by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 29.1329 Automatic pilot system.

(a) Each automatic pilot system must be designed so that the automatic pilot can—

(1) Be sufficiently overpowered by one pilot to allow control of the rotorcraft; and

(2) Be readily and positively disengaged by each pilot to prevent it from interfering with the control of the rotorcraft.

* * * * *

(e) If the automatic pilot integrates signals from auxiliary controls of furnishes signals for operation or other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation.

62. By revising § 29.1331(a)(3) to read as follows:

§ 29.1331 Instruments using a power supply.

* * * * *

(a) * * *

(3) A visual means integral with each instrument to indicate when the power adequate to sustain proper instrument performance is not being supplied. The power must be measured at or near the point where it enters the instrument. For electrical instruments, the power is considered to be adequate when the voltage is within the approved limits; and

* * * * *

63. By revising § 29.1333 to read as follows:

§ 29.1333 Instrument systems.

For systems that operate the required flight instruments which are located at each pilot's station, the following apply:

(a) Only the required flight instruments for the first pilot may be connected to that operating system.

(b) The equipment, systems, and installations must be designed so that one display of the information essential to the safety of flight which is provided by the flight instruments remains available to a pilot, without additional crewmember action, after any single failure or combination of failures that are not shown to be extremely improbable.

(c) Additional instruments, systems, or equipment may not be connected to the operating system for a second pilot unless provisions are made to ensure the continued normal functioning of the required flight instruments in the event of any malfunction of the additional instruments, systems, or equipment which is not shown to be extremely improbable.

64. By revising § 29.1355(b) to read as follows:

§ 29.1355 Distribution system.

* * * * *

(b) If two independent sources of electrical power for particular equipment or systems are required by

this chapter, in the event of the failure of one power source for such equipment or system, another power source (including its separate feeder) must be provided automatically or be manually selectable to maintain equipment or system operation.

65. By revising § 29.1357 (b), (d), and (e) and by adding a new paragraph (g) to read as follows:

§ 29.1357 Circuit protective devices.

* * * * *

(b) The protective and control devices in the generating system must be designed to de-energize and disconnect faulty power sources and power transmission equipment from their associated buses with sufficient rapidity to provide protection from hazardous overvoltage and other malfunctioning.

* * * * *

(d) If the ability to reset a circuit breaker or replace a fuse is essential to safety in flight, that circuit breaker or fuse must be located and identified so that it can be readily reset or replaced in flight.

(e) Each essential load must have individual circuit protection. However, individual protection for each circuit in an essential load system (such as each position light circuit in a system) is not required.

* * * * *

(g) Automatic reset circuit breakers may be used as integral protectors for electrical equipment provided there is circuit protection for the cable supplying power to the equipment.

66. By amending § 29.1505 by removing the word "or" at the end of paragraph (a)(2)(i); by removing the period from the end of paragraph (a)(2)(ii) and adding "; or" in its place; and by adding a new paragraph (a)(2)(iii) to read as follows:

§ 29.1505 Never-exceed speed.

(a) * * *

(2) * * *

(iii) 0.9 times the maximum speed substantiated for advancing blade tip mach number effects under critical altitude conditions.

* * * * *

67. By revising § 29.1525 to read as follows:

§ 29.1525 Kinds of operations.

The kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved are established by demonstrated compliance with the applicable certification requirements and by the installed equipment.

68. By revising § 29.1555(a) and adding a new paragraph (e) to read as follows:

§ 29.1555 Control markings.

(a) Each cockpit control, other than primary flight controls or control whose function is obvious, must be plainly marked as to its function and method of operation.

* * * * *

(e) For rotorcraft incorporating retractable landing gear, the maximum landing gear operating speed must be displayed in clear view of the pilot.

69. By revising § 29.1559 to read as follows:

§ 29.1559 Limitations placard.

There must be a placard in clear view of the pilot that specifies the kinds of operations (VFR, IFR, day, night, or icing) for which the rotorcraft is approved.

70. By amending § 29.1583 by revising paragraph (g) and by adding a new paragraph (i) to read as follows:

§ 29.1583 Operating limitations.

* * * * *

(g) *Maximum allowable wind.* For Category A rotorcraft, the maximum allowable wind for safe operation near the ground must be furnished.

* * * * *

(i) *Ambient temperature.* Maximum and minimum ambient temperature limitations must be furnished.

71. By adding a new § 29.1585(g) to read as follows:

§ 29.1585 Operating procedures.

* * * * *

(g) For Category B rotorcraft, the airspeeds and corresponding rotor speeds for minimum rate of descent and best glide angle as prescribed in § 29.71 must be provided.

* * * * *

72. By amending § 29.1587 by adding an introductory paragraph; by removing the word "and" from the end of paragraphs (a)(3) and (b)(6); by revising paragraph (a)(4); by adding new paragraphs (a)(5), (b)(7), (b)(8), by redesignating paragraphs (b)(7) to (b)(9), and by amending paragraph (b)(1) to read as follows:

§ 29.1587 Performance information.

Flight manual performance information which exceeds any operating limitation may be shown only to the extent necessary for presentation clarity or to determine the effects of approved optional equipment or procedures. When data beyond operating limits are shown, the limits must be clearly indicated. The following must be provided:

(a) * * *

(4) The rejected takeoff distance determined under § 29.59(b) and the takeoff distance determined under § 29.59(c); and

(5) The landing data determined under §§ 29.75 and 29.77.

(b) * * *

(1) The takeoff distance and the climbout speed together with the pertinent information defining the flight path with respect to autorotative landing if an engine fails, including the calculated effects of altitude and temperature;

* * * * *

(7) Glide distance as a function of altitude when autorotating at the speeds and conditions for minimum rate of descent and best glide angle, as determined in § 29.71;

(8) Maximum safe wind for hover operations out-of-ground effect if hover performance for that condition is provided; and

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

73. By amending § 91.31 by revising the title and paragraph (a) and by removing paragraph (e) as follows:

§ 91.31 Civil aircraft flight manual, marking, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

* * * * *

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (40 U.S.C. 1354(a), 1421, 1423 and 1424); 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983))

Note.—As summarized in the Supplementary Information, Discussion of Comments, Economic Summary, and Regulatory Flexibility Determination sections of this rulemaking action, the FAA has determined that the benefits of this amendment, in providing an increased level of safety to passengers traveling in rotorcraft

while at the same time recognizing and providing for the unique qualities and capabilities of rotorcraft, far outweigh the burdens and that this action: (1) Involves a regulation that is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, for reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act these amendments will not have a significant economic impact on a substantial number of small entities. Also, these amendments would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. A final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, D.C., on August 14, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84-29088 Filed 11-5-84; 8:45 am]

BILLING CODE 4910-13-M