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FEDERAL MARITIME COMMISSION

46 CFR PART 502

[DOCKET NO. 90-29]

AMENDMENT TO RULES OF PRACTICE AND PROCEDURE;
INTEREST IN REPARATION PROCEEDINGS

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") proposes to amend Rule 253 of its Rules of Practice and Procedure, 46 C.F.R. § 502.253, Interest in reparation proceedings. The Rule currently limits payment of interest to proceedings involving misrating of cargo and arising under section 10(b) of the Shipping Act of 1984 and section 2 of the Intercoastal Shipping Act, 1933. The proposed amendment would make Rule 253 applicable to the computation of interest on awards of reparation granted under the Shipping Act of 1984 and the Shipping Act, 1916 on the basis of the average rate on six-month U.S. Treasury bills. Under the Intercoastal Shipping Act, 1933, interest would be computed on the average of the prime rate charged by major banks as published by the Board of Governors of the Federal Reserve System.

DATE: Comments due on or before [insert date thirty (30) days after publication in the Federal Register].

ADDRESS: Send comments (original and fifteen copies) to:

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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Rule 253 of the FMC's Rules of Practice and Procedure, 46 C.F.R. 502.253, governs the payment of interest on awards of reparation. It currently provides for the payment of interest "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 is to be computed on the basis of the average monthly rates on six-month U.S. Treasury bills.

However, section 11(g) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1710(g), contemplates awards of reparation not only for injuries caused by misrating but also for "actual injury" caused by any violation of the 1984 Act. Actual injury includes "the loss of interest at commercial rates compounded from the date of injury."

Further, section 22(a) of the Shipping Act, 1916 ("1916 Act") permits the Commission to direct full reparation to a complainant for any violation of the 1916 Act. 46 U.S.C. app. 821. It, however, contains no reference to the payment of interest on such awards.¹

¹ The Commission's policy has been to assess interest on reparation awards granted under section 22 of the 1916 Act. See,
(continued...)

Section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. 844, referred to in Rule 253, prohibits the collection of freight charges different from the rates and charges on file with the Commission. In addition, section 3(c)(2) of the 1933 Act permits the Commission to order a refund of that portion of a general rate increase that is not just and reasonable and section 4 allows reparations for unjust or unreasonable rates. Under these situations, interest is to be "computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System."²

Under the Proposed Rule, interest on awards of reparation for all violations of the 1984 Act and the 1916 Act would be computed on the basis of the average monthly rate on six-month U.S. Treasury bills. This is a continuation of the standard currently used only for reparations in misrating cases.³ The Commission believes that this standard is particularly appropriate for all 1984 Act and 1916 Act cases for the reasons stated when it was originally adopted, i.e., persons to whom reparations have been awarded would have had

¹(...continued)
e.g., Oakland Car Co. v. Great Lakes Transit Corp., 1 U.S.S.B.B. 308, 312 (1945); United States Borax & Chemical Corporation v. Pacific Coast European Conference et al., 11 F.M.C. 451, 470 (1968), citing L. & N.R.R. v. Sloss-Sheffield Co., 269 U.S. 217, 239 (1925), where the Court recognized the loss of interest on charges unlawfully collected as an element of damages.

² The 1933 Act was enacted as an amendment to the 1916 Act. Both presently apply to transportation by water in the U.S. domestic offshore trades.

³ Due to a technical error made in the course of preparing final rules under the 1984 Act, this standard was inadvertently made applicable to only misrating of cargo cases.

the additional funds to use or invest and should be compensated according to investment rates in money and capital markets. Docket No. 81-22, Interest in Reparation Proceedings, 20 S.R.R. 1511, 1514 (1981). After having chosen an investment rate rather than loan rate, the Commission there chose the short term T-Bill rate, because the uncertainty and the general short duration of overpayments made it unlikely that such funds could have been used for longer term investments. Id. When the Commission later adopted a rule to implement the 1984 Act, it again chose the T-Bill rate, but changed the method of calculating interest from simple to compound. Docket No. 84-17, Interest in Reparation Proceedings, 22 S.R.R. 1069 (1984). The Commission there stated that it intended to establish a benchmark interest rate that would produce a reasonable result for the reparations process. Although noting several alternative forms of investments, the Commission determined that monthly yields on six-month T-Bills produced a fair rate of interest. Interest in Reparation Proceedings, supra, 22 S.R.R. at 1071. In this regard, it should be noted that Congress has chosen a T-Bill rate for interest award on money judgments in civil cases in United States district courts. See 28 U.S.C. § 1961(a).

In view of the specific statutory requirement, interest on refunds and reparation awards granted under the 1933 Act would be computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the reparation applies.

The Federal Maritime Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not 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 investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b), of the Regulatory Flexibility Act, 5 U.S.C. 605(b) that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this Notice of Proposed Rulemaking because the amendments to Part 502 of Title 46, Code of Federal Regulations, do not impose any additional reporting or record keeping requirements or change the information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 46 C.F.R. Part 502:

Administrative Practice and Procedure

Therefore, pursuant to 5 U.S.C. 551, 553, 559, the Federal Maritime Commission proposes to amend Part 502 of Title 46 of the Code of Federal Regulations as follows:

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

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6469); and 21 U.S.C. 853a.

2. Section 502.523 is revised to read as follows:

§ 502.253 Interest in reparation proceedings.

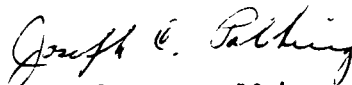
Except as to applications for refund or waiver of freight charges under section 502.92 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest granted on awards of reparation in complaint proceedings instituted under the Shipping Act of 1984, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, will accrue from the date of injury to the date specified in the Commission order awarding reparations. Compounding will be daily from the date specified in the Commission order awarding reparation. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission order.

(a) On awards of reparation granted under the Shipping Act of 1984, or the Shipping Act, 1916, interest shall be computed on the basis of the average monthly rate on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and

concluding with the latest available U.S. Treasury bill rate at the date of the Commission order awarding reparation. The monthly rates on six-month U.S. Treasury bills for the reparation period will be summed up and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period.

(b) On refunds ordered under section 3(c)(2) and awards of reparation granted under section 4 of the Intercoastal Shipping Act, 1933 interest shall be computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System during the period to which the reparation applies. [Rule 253.]

By the Commission.


Joseph C. Polking
Secretary

