

FEDERAL MARITIME COMMISSION

46 CFR PART 502

[DOCKET NO. 93-24 ]

AMENDMENT TO RULES OF PRACTICE AND PROCEDURE

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission proposes to amend its Rules of Practice and Procedure to make the complainant in a private complaint action responsible for service of the complaint and certain other documents in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, when the Commission has been unsuccessful, for any reason, in effectuating service by certified or registered mail. The proposed rule would also require complainant, when it effectuates service of a complaint, to notify the Commission of the date and manner of service, and the respondent of the time in which it must answer the complaint. Similar amendments are proposed for the Commission's Rules governing small claims. The proposed rule would conform the Commission's Rules regarding service more closely to the Federal Rules of Civil Procedure.

DATES: Comments due [insert date 45 days after date of publication in the Federal Register].

ADDRESS: Send comments (original and fifteen copies) to:  
Joseph C. Polking, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001  
(202) 523-5725

SUPPLEMENTARY INFORMATION:

Under Rule 113 of its Rules of Practice and Procedure, 46 CFR 502.113, the Commission is presently charged with the responsibility for service of private complaints, amendments to complaints, and complainant's memoranda filed in shortened procedure cases, while section Rule 114, 46 CFR 502.114 requires that parties serve all other pleadings. In administering Rule 113, the Commission has experienced occasions where complaints and other pleadings have been returned by the United States Postal Service because the respondent refused delivery, an incorrect address was provided by the complainant, or the respondent had moved leaving no forwarding address. In such circumstances, the Commission has resorted to alternative methods of service such as utilizing a Commission investigator to personally find and serve the respondent, or serving the secretary of state pursuant to state law.

Section 11(b) of the Shipping Act of 1984, 46 U.S.C. app. 1710(b), requires the Commission to "furnish a copy" of a private complaint to the named respondent, but this would not appear to require the Commission to expend its own resources on behalf of a private complainant beyond an initial service by certified or registered mail. Accordingly, the Commission proposes to amend

Rule 113 to shift the responsibility of service to the complainant when the Commission has been unsuccessful in effectuating service by certified or registered mail. In that event, it would be left to the complainant to effectuate service in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, delivering a copy of the complaint personally to the respondent or to an agent authorized by appointment or by law to receive service of process.

The proposed rule would also require the complainant, if required to effectuate service, to notify the Commission's Secretary of the date and manner of service, and to notify the respondent of the time prescribed by Rule 64 of the Commission's Rules of Practice and Procedure, 46 CFR 502.64, within which the respondent must answer the complaint. A new form - Notice of Complaint Filed - would be added to Exhibit 1, Subpart E of Part 502, Complaint Form and Information Checklist, which would inform the respondent of the time within which the complaint must be answered, similar to a summons in federal court. The proposed rule would also amend 46 CFR 502.304(d), governing claims filed under Subpart S, Informal Procedure for Adjudication of Small Claims, to require the claimant to effectuate service when service by certified or registered mail by the settlement officer has been unsuccessful. A new form - Notice of Claim Filed - would be added to subpart S as Exhibit 3.

The proposed rule would conform the Commission's Rules regarding service more closely to the Federal Rules of Civil

Procedure, which require the plaintiff or the plaintiff's attorney to be responsible for prompt service of a complaint. Also, the proposed amendment would remove the burden on the Commission to effect service on those occasions when service by certified mail or registered mail has been unsuccessful.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), that because this rule deals only with agency practice and procedure, it will not have a significant impact on a substantial number of small entities, including small businesses, small organizational units, and small government jurisdictions.

#### List of Subjects

#### 46 CFR 502

Administrative practice and procedure, Claims, Equal access to justice, Informal procedures for investigations, Lawyers, Penalties, Reporting and recordkeeping requirements.

Therefore, notice is hereby given that the Commission proposes to amend Part 502 of Title 46 CFR as follows:

#### PART 502 - RULES OF PRACTICE AND PROCEDURE

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

Authority: 5 U.S.C. 504, 551, 552, 553, 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); 21 U.S.C. 853a; and Pub. L. 88-777 (46 U.S.C. app. 817d, 817e).

2. Section 502.113 is revised to read as follows:

§ 502.113 Service by the Commission and complainant.

(a) Complaints filed pursuant to section 502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to section 502.70(b)), and complainant's opening memoranda filed in shortened procedure cases will be served by the Commission by certified or registered mail. If service by the Commission is unsuccessful for any reason, the complainant must effectuate service in any manner and within the time period authorized by Rule 4 of the Federal Rules of Civil Procedure, notify the Secretary of the date and manner of service, and notify the respondent of the time, pursuant to § 502.64, within which respondent must answer the complaint. A form - Notice of Complaint Filed - is set forth in Exhibit No.1a, Subpart E.

(b) 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 section 502.118) and for service on each party to the proceeding. [Rule 113].

3. Section 502.304(d) is revised to read as follows:

§ 502.304 Procedure and Filing Fee

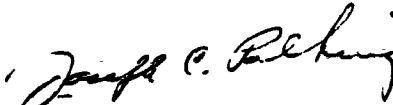
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(d) A copy of each claim filed under this subpart, with attachments, shall be served by certified or registered mail by the Settlement Officer on the respondent involved. If service by the Settlement Officer is unsuccessful for any reason, the claimant must effectuate service in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, notify the Settlement Officer of

the date and manner of service, and notify the respondent of the time, pursuant to paragraph (e) of this section, within which respondent must answer the complaint. A form - Notice of Claim Filed - is set forth in Exhibit 3, Subpart S.

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By the Commission.

  
Joseph C. Polking  
Secretary

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# Federal Maritime Commission

Washington, D.C. 20573

## NOTICE OF COMPLAINT FILED

DOCKET NUMBER:

V.

TO: (Name and Address of Respondent)

**YOU ARE HEREBY NOTIFIED** that a complaint has been filed against you, and you are required to file with the Secretary of the Commission and serve upon

COMPLAINANT OR COMPLAINANT'S ATTORNEY (Name and Address)

an answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this notice upon you, exclusive of the day of service, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure, 46 CFR Part 502 (See also Rules 2, 41, 42, 101, and 111-118). If you fail to answer timely, judgment by default may be taken against you for the relief demanded in the complaint.

\_\_\_\_\_  
Secretary, Federal Maritime Commission

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Date

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# Federal Maritime Commission

Washington, D.C. 20573

## NOTICE OF CLAIM FILED

INFORMAL DOCKET NUMBER:

V.

TO: (Name and Address of Respondent)

**YOU ARE HEREBY NOTIFIED** that a claim has been filed against you, and you are required to file with the Settlement Officer, Federal Maritime Commission and serve upon

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address)

an answer to the claim which is herewith served upon you, within 25 days after service of this notice upon you, exclusive of the day of service, unless additional time is permitted by the Settlement Officer. Your failure to respond is conclusively deemed to indicate your consent to the informal complaint procedure (46 CFR 502.304(e)), and an adverse decision may be entered against you; such decision will become final unless the Commission elects to review it within 30 days of the date of its service (46 CFR 502.304(g)).

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Settlement Officer

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Date