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the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act under §§ 503.31-503.43 of this chapter.

(c) *Documentation of fees and expenses.* The petition shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When a petition may be filed.* (1) A petition may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(2) For purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered

by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal. [Rule 502.]

[52 FR 28264, July 29, 1987, as amended at 64 FR 7812, Feb. 17, 1999]

§ 502.503 Procedures for considering petitions.

(a) *Filing and service of documents.* (1) Any petition for an award or other pleading or document related to a petition shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 502.502(b)(2) (confidential financial information).

(2) The petition and all other pleadings or documents related to the petition will be referred to an Administrative Law Judge to initially decide the matter as adjudicative officer.

(b) *Reply to petition.* (1) Within 30 days after service of a petition, counsel representing the agency against which an award is sought may file a reply to the petition. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file a reply within the 30-day period may be treated as a consent to the award requested.

(2) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing a reply for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(3) The reply shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the reply is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Response to reply.* Within 15 days after service of a reply, the applicant may file a response. If the response is based on any alleged facts not already

in the record of the proceeding, the applicant shall include with the response either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on a reply, within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded in accordance with the rules of this subpart pertaining to settlement. If a prevailing party and agency counsel agree on a proposed settlement of an award before a petition is filed, the petition shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The adjudicative officer shall serve an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reason for the allocation made.

(h) *Commission review.* Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with § 502.227 of this part. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* (1)(i) An applicant seeking payment of an award shall submit to the comptroller or other disbursing officer of the paying agency a copy of the Commission's

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final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

(ii) The agency will pay the amount awarded to the applicant within 60 days.

(2) Where the Federal Maritime Commission is the paying agency, the application for payment of award shall be submitted to: Office of Budget and Financial Management, Federal Maritime Commission, Washington, DC 20573. [Rule 503.]

[52 FR 28264, July 29, 1987, as amended at 64 FR 7812, Feb. 17, 1999]

Subpart W—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

SOURCE: 49 FR 44418, Nov. 6, 1984, unless otherwise noted. Redesignated at 58 FR 27211, May 7, 1993.

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 19 of the Merchant Marine Act, 1920, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Pub. L. 89-777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Merchant Marine Act, 1920, the Shipping Act of 1984, Public Law 89-777, and/or any order, rule, or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes. [Rule 601.]

[64 FR 7812, Feb. 17, 1999]

§ 502.602 Definitions.

For the purposes of this subpart:

(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

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the Commission outside of a formal, docketed proceeding.

(d) *Mitigation* means the reduction, in whole or in part, of the amount of a civil penalty.

(e) *Person* includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(f) *Respondent* means any person charged with a violation.

(g) *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.

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

(i) 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. [Rule 602.]

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 64 FR 7812, Feb. 17, 1999]

§ 502.603 Assessment of civil penalties: Procedure; 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 hearing. Civil penalty assessment proceedings, including settlement negotiations, shall be governed by the Commission's Rules of Practice