

and Procedure in this part. 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. Such 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 § 502.604(e). [Rule 603.]

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

**§ 502.604 Compromise of penalties: Relation to assessment proceedings.**

(a) *Scope.* Except in pending civil penalty assessment proceedings provided for in § 502.603, 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 when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a Notice and Demand Letter ("NDL") to the respondent, by registered or certified mail, or by other means reasonably calculated to give notice. The NDL will describe 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 NDL also will state 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 NDL 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 § 502.603(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 a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such compromise agreement is set forth as appendix A to this subpart.) 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 duplicate original of the executed agreement shall be furnished to the respondent.

(2) 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

§ 502.605

46 CFR Ch. IV (10-1-06 Edition)

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 subpart is delegated to the Director, Bureau of Enforcement. [Rule 604.]

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 61 FR 51233, Oct. 1, 1996; 64 FR 7812, 7813, Feb. 17, 1999]

§ 502.605 Payment of penalty: Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made by bank cashier's check or other instrument acceptable to the Commission.

(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 § 502.603, or compromised and agreed to under § 502.604, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such defaulting respondent is a licensed freight forwarder, such default also may 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. [Rule 605.]

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 64 FR 7813, Feb. 17, 1999]

APPENDIX A TO SUBPART W OF PART 502—EXAMPLE OF COMPROMISE AGREEMENT TO BE USED UNDER 46 CFR 502.604

*Compromise Agreement*

FMC File No. \_\_\_\_\_

This Agreement is entered into between: (1) the Federal Maritime Commission, hereinafter referred to as 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 [appropriate statute], for alleged violations of section \_\_\_\_\_;

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by Respondent, to wit:

[General description of practices and dates or time period involved]

Whereas, the Commission has authority under the Shipping Act of 1984 to compromise and collect civil penalties; and,

Whereas, Respondent has terminated the practices which are the basis for the allegations of violation set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate these practices by Respondent, its officers, directors or employees.

Now Therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations, Respondent and the Commission hereby agree upon the following terms and conditions of compromise and settlement:

1. Respondent shall make a monetary payment to the Commission herewith, by bank cashier's check, in the total amount of \$ \_\_\_\_\_.

2. Upon acceptance in writing of this Agreement by the Director of the Bureau of Enforcement of the Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claim for recovery of civil penalties from the Respondent arising from the alleged violations set forth above.

3. It is expressly understood and agreed that this Agreement is not, and is not to be construed as, an admission by Respondent to the alleged violations set forth above.

(Respondent's Name)

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*Approval and Acceptance*

The above terms, conditions and consideration are hereby approved and accepted:

By the Federal Maritime Commission:  
Director, Bureau of Enforcement

Date: \_\_\_\_\_

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 61 FR 51233, Oct. 1, 1996; 65 FR 81759, Dec. 27, 2000]