

## § 502.62

and when practicable the parties shall consider the use of alternative dispute resolution in such manner as the presiding officer shall direct and further requiring that hearings shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. [Rule 61.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7808, Feb. 17, 1999; 64 FR 23551, May 3, 1999; 66 FR 43512, Aug. 20, 2001]

### § 502.62 Complaints and fee.

(a) The complaint must be verified and 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

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

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 necessary.

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

(e) Complainant(s) must state whether informal dispute resolution procedures were used prior to filing the complaint and whether complainant(s) consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution (ADR) under the Commission's ADR program.

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

(g) The complaint shall be accompanied by remittance of a \$221 filing fee.

(h) Complainants desiring to use the discovery provisions of subpart L must commence discovery at the time the complaint is filed, pursuant to § 502.201(b).

(i) For special types of cases, see § 502.271 in subpart Q (Refund or waiver of freight charges); subpart K (Shortened Procedure); and subpart S (Small Claims). [Rule 62.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990; 63 FR 50535, Sept. 22, 1998; 64 FR 7808, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001; 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005]

### § 502.63 Statute of limitations for reparations.

(a) 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.

(b) 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.

## Federal Maritime Commission

## § 502.67

(See §§ 502.251–502.253 and Exhibit No. 1 to subpart O.)

(c) 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.

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

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7808, Feb. 17, 1999]

### § 502.64 Answer to complaint; counter-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. An answer to the complaint must be verified.

(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.]

(d) In addition to filing an answer to a complaint, respondent may file a counter-complaint alleging violations of the Shipping Acts within the juris-

dition of the Commission. The filing of counter-complaints and answers to counter-complaints is governed by the rules and requirements of § 502.62 (excluding fees) and of this section for the filing of complaints and answers. Counter-complaints may be served directly by the parties if authorized by the presiding officer. [Rule 64.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27210, May 7, 1993; 64 FR 7808, Feb. 17, 1999]

### § 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 Exemption procedures—General.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Shipping Act of 1984 or any specified activity of persons subject to the Shipping Act of 1984 from any requirement of the Shipping Act of 1984 if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.

(b) *Application for exemption.* Any person may petition the Commission for an exemption or revocation of an exemption of any class of agreements or an individual agreement or any specified activity pursuant to section 16 of the Shipping Act of 1984. A petition for exemption shall state the particular requirement of the Shipping Act of 1984