

## Federal Maritime Commission

## § 502.71

the petition. If the controversy or uncertainty is one of general public interest, and not limited to specifically named persons, opportunity for reply will be given to all interested persons including the Commission's Bureau of Enforcement.

(2) In the case of petitions involving a matter limited to specifically named persons, participation by persons not named therein will be permitted only upon grant of intervention by the Commission pursuant to § 502.72.

(3) Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

(g) Petitions for declaratory order which conform to the requirements of this section will be referred to a formal docket. Referral to a formal docket is not to be construed as the exercise by the Commission of its discretion to issue an order on the merits of the petition. [Rule 68.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 59 FR 59170, Nov. 16, 1994; 61 FR 51233, Oct. 1, 1996; 63 FR 50535, Sept. 22, 1998; 65 FR 81759, Dec. 27, 2000; 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005]

### § 502.69 Petitions—General and fee.

(a) Except when submitted in connection with a formal proceeding, all claims for relief or other affirmative action by the Commission, including appeals from Commission staff action, except as otherwise provided in this part, shall be by written petition, which shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provisions or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of subpart H of this part. Replies thereto shall conform to the requirements of § 502.74.

(b) Petitions shall be accompanied by remittance of a \$241 filing fee. [Rule 69.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4143, Feb. 10, 1987; 59 FR 59170, Nov. 16, 1994; 63 FR 50535, Sept. 22, 1998; 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005]

### § 502.70 Amendments or supplements to pleadings.

(a) Amendments or supplements to any pleadings will be permitted or rejected, either in the discretion of the Commission if the case has not been assigned to a presiding officer for hearing, or otherwise, in the discretion of the officer designated to conduct the hearing, except that after a case is assigned for hearing, no amendment shall be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state its case more fully and in more detail by way of amendment.

(b) A response to an amended pleading must be filed and served in conformity with the requirements of subpart H of this part and § 502.74, unless the Commission or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading, except that the presiding officer may authorize the service of amended complaints directly by the parties rather than by the Secretary of the Commission.

(c) Whenever by the rules in this part a pleading is required to be verified, the amendment or supplement shall also be verified. [Rule 70.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27210, May 7, 1993]

### § 502.71 Motions for more definite statement.

If a pleading (including a complaint or counter-complaint filed pursuant to § 502.62 or § 502.64) to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall be filed within 15 days of the pleading and shall point out the defects

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complained of and the details desired. If the motion is granted and the order of the presiding officer is not obeyed within 10 days after service of the order or within such time as the presiding officer may fix, the presiding officer may strike the pleading to which the motion was directed or make such order as is deemed just. If the motion is disallowed, the time for responding to the pleading shall be extended to a date 10 days after service of the notice of disallowance. [Rule 71.]

[58 FR 27210, May 7, 1993, as amended at 64 FR 7808, Feb. 17, 1999]

### § 502.72 Petition for leave to intervene.

(a) A petition for leave to intervene may be filed in any proceeding and shall be served on existing parties by the petitioner pursuant to subpart H of this part. An additional fifteen (15) copies of the petition shall be filed with the Secretary for the use of the Commission. Upon request, the Commission will furnish a service list to any member of the public pursuant to part 503 of this chapter. The petition shall set forth the grounds for the proposed intervention and the interest and position of the petitioner in the proceeding and shall comply with the other applicable provisions of subpart H of this part, and if affirmative relief is sought, the basis for such relief. Such petition shall also indicate the nature and extent of the participation sought, e.g., the use of discovery, presentation of evidence and examination of witnesses.

(b)(1) Petitions for leave to intervene as a matter of right will only be granted upon a clear and convincing showing that:

(i) The petitioner has a substantial interest relating to the matter which is the subject of the proceeding warranting intervention; and

(ii) The proceeding may, as a practical matter, materially affect the petitioner's interest; and

(iii) The interest is not adequately represented by existing parties to the proceeding.

(2) Petitions for intervention as a matter of Commission discretion may be granted only upon a showing that:

(i) A common issue of law or fact exists between the petitioner's interests

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and the subject matter of the proceeding; and

(ii) Petitioner's intervention will not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights of or be duplicative of positions of any existing party; and

(iii) The petitioner's participation may reasonably be expected to assist in the development of a sound record.

(3) The timeliness of the petition will also be considered in determining whether a petition will be granted under paragraphs (b)(1) or (b)(2) of this section. If filed after hearings have been closed, a petition will not ordinarily be granted.

(c) In the interests of: (1) Restricting irrelevant, duplicative, or repetitive discovery, evidence or arguments; (2) having common interests represented by a spokesperson; and (3) retaining authority to determine priorities and control the course of the proceeding, the presiding officer, in his or her discretion, may impose reasonable limitations on an intervenor's participation, e.g., the filing of briefs, presentation of evidence on selected factual issues, or oral argument on some or all of the issues.

(d) Absent good cause shown, any intervenor desiring to utilize the procedures provided by subpart L must commence doing so no later than fifteen (15) days after its petition for leave to intervene has been granted. If the petition is filed later than thirty (30) days after the date of publication in the FEDERAL REGISTER of the Commission's Order instituting the proceeding or notice of complaint filed, petitioner will be deemed to have waived its right to utilize such procedures, unless good cause is shown for the failure to file the petition within the 30-day period. The use of subpart L procedures by an intervenor whose petition was filed beyond such 30-day period will in no event be allowed, if, in the opinion of the presiding officer, such use will result in delaying the proceeding unduly.

(e) If intervention is granted before or at a prehearing conference convened for the purpose of considering matters relating to discovery, the intervenor's discovery matters may also be considered at that time, and may be limited