

Federal Maritime Commission

§ 502.94

it appears that a particular procedure would be helpful.

(b) Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(c) No stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. [Rule 91.]

(d) As soon as practicable after the commencement of any proceeding, the presiding judge shall direct the parties or their representatives to consider the use of alternative dispute resolution, including but not limited to mediation, and may direct the parties or their representatives to consult with the Federal Maritime Commission Alternative Dispute Resolution Specialist about the feasibility of alternative dispute resolution.

(e) Any party may request that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will appoint a mediator or other neutral who is acceptable to all parties, coordinating with the Federal Maritime Commission Alternative Dispute Resolution Specialist. The mediator or other neutral shall convene and conduct one or more mediation or other sessions with the parties and shall inform the presiding judge, within the time prescribed by the presiding judge, whether the dispute resolution proceeding resulted in a resolution or not, and may make recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling. All such dispute resolution proceedings shall be subject to the provisions of subpart U.

(f) Any party may request that a settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a settlement judge who is acceptable to all parties. The settlement judge shall

convene and preside over conferences and settlement negotiations and shall report to the presiding judge within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling. [Rule 91].

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7808, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001]

§ 502.92 [Reserved]

§ 502.94 Prehearing conference.

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

- (i) Simplification of the issues;
- (ii) The necessity or desirability of amendments to the pleadings;
- (iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (iv) Limitation on the number of witnesses;
- (v) The procedure at the hearing;
- (vi) The distribution to the parties prior to the hearing of written testimony and exhibits;
- (vii) Consolidation of the examination of witnesses by counsel;
- (viii) Such other matters as may aid in the disposition of the proceeding.

(2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He or she shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

§ 502.95

46 CFR Ch. IV (10–1–06 Edition)

(3) The presiding officer shall rule upon all matters presented for decision, orally upon the record when feasible, or by subsequent ruling in writing. If a party determines that a ruling made orally does not cover fully the issue presented, or is unclear, such party may petition for a further ruling thereon within ten (10) days after receipt of the transcript.

(b) In any proceeding under the rules in this part, the presiding officer may call the parties together for an informal conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purposes of this section. [Rule 94.]

(c) At any prehearing conference, consideration shall be given to whether the use of alternative dispute resolution would be appropriate or useful for the disposition of the proceeding whether or not there has been previous consideration of such use.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7808, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001]

§ 502.95 Prehearing statements.

(a) Unless waiver is granted by the presiding officer, it shall be the duty of all parties to a proceeding to prepare a statement or statements at a time and in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth the following matters, unless otherwise ordered by the presiding officer:

(1) Issues involved in the proceeding.

(2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible.

(3) Facts in dispute.

(4) Witnesses and exhibits by which disputed facts will be litigated.

(5) A brief statement of applicable law.

(6) The conclusion to be drawn.

(7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case.

(8) Any appropriate comments, suggestions or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

(c) The presiding officer may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement. Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances.

(d) Following the submission of prehearing statements, the presiding officer may, upon motion or otherwise, convene a prehearing conference for the purpose of further narrowing issues and limiting the scope of the hearing if, in his or her opinion, the prehearing statements indicate lack of dispute of material fact not previously acknowledged by the parties or lack of legitimate need for cross-examination and is authorized to issue appropriate orders consistent with the purposes stated in this section. [Rule 95.]

EXHIBIT NO. 1 TO SUBPART F OF PART 502 [RESERVED]

Subpart G—Time

§ 502.101 Computation.

In computing any period of time under the rules in this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or national legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or national legal holidays shall be excluded from the computation. [Rule 101.]